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NOTES OF THE WEEK

The Lord Chief Justice on Corporal Punishment

Speaking at the annual meeting of the Magistrates' Association Lord Parker referred to the upsurge of crime in recent years, and suggested some of the measures that were needed to deal with it.

The members were obviously in agreement with the suggestion that corporal punishment should be re-introduced. In fact, the current issue of the Association's journal, *The Magistrate* (which came to hand a few days before the meeting) contained a letter from a magistrate who wished to promote a movement or agitation, as he put it, for the purpose, and *The Magistrate* gave a brief account of what had been said and done by members of the Association during recent years.

The Lord Chief Justice, like his predecessor, does not advocate the return of the cat, holding it to be a brutal form of punishment and likely to make a martyr of a man. What he proposes is the infliction of the cane or the birch, as having just enough indignity to act as a deterrent. A shorter sentence, with corporal punishment added, would, in his view, be more effective than a longer sentence without it.

Observations from such a quarter must receive weighty consideration, and no doubt the matter will be discussed in Parliament, where the issue can be decided. What troubles us is that so many of the young men who would be the subjects of corporal punishment behave as if they had no standards of conduct, no better nature that can be appealed to, and no sense of dignity or self-respect. Would these be ashamed of the indignity, and if not would they not prefer corporal punishment of the kind suggested to a long period of imprisonment or other detention? We confess to finding it difficult to answer the question, perhaps some of those who have had first hand experience of dealing with this type of offender will be able to help in the discussion.

Prevention of Crime

There will certainly be no dissent from the opinion of the Lord Chief Justice that one pressing need is an increase in the number of police, coupled with measures for increasing efficiency. Lord Parker quoted the case of a young man who was not caught until he had committed 66 offences of house-breaking, and observed that if the odds, instead of being 66 to one against being detected, were even, that fact would be a greater deterrent than the possibility of a longer sentence when caught after a long run.

We believe this to be absolutely true, and we turn again to the title-page of our old and valued friend *Stone*, with its quotation from Archdeacon Paley: "a vigilant magistracy, an accurate police and an undeviating impartiality in carrying the laws into execution, contribute more to the restraint and suppression of crime than any excessive severity of punishment."

Give the police the additional men of the right type, and the best modern equipment and resources that science can provide, and the crime wave will begin to recede.

Adolescent Offenders

The problem of the adolescent offender is dealt with in the report of the Home Secretary's Advisory Council on the Treatment of Young Offenders. The report, which has been favourably received by the press generally, advocates less imprisonment, more detention centres and a greater use of the indeterminate sentences as in sentences of borstal training.

There are two sound reasons for reducing the number of prison sentences. The first is that prisons are overcrowded, the second that present policy is to substitute other forms of detention and supply more reformative treatment without sacrificing the deterrent element.

We are glad to note the recommendation that the use of detention centres should be increased. It is considered that these provide a greater deterrent than a short prison sentence; conditions may be better than in prison, but the regime is more exacting. The report suggests that there should be only two standard detention sentences, three months and six months, according to the circumstances of the case. We believe that experience has shown

that the standard sentence of three months is in many instances too short to enable the staff to make much impression on a lad, where they feel that in a longer period they could do something to teach discipline and cultivate habits of cleanliness and orderliness. At present a sentence of six months detention can be imposed only exceptionally, and there is no power to pass consecutive sentences. The period of detention in the case of a young person tried summarily for an indictable offence must not exceed three months. This is the combined effect of s. 18 of the Criminal Justice Act, 1948, and s. 20 of the Magistrates' Courts Act, 1952. We think that in many cases a sentence of six months' detention, followed by compulsory after-care, would prove both deterrent and reformative.

Abandoned or Stolen?

The *Western Morning News* recently reported a case in which a man, charged with stealing a shock absorber from a car in a car park said he thought the car was abandoned, as he had seen it day after day in the same place and had been told it was abandoned. He also said he had been trying to see the owner, but admitted that he ought to have made more inquiry.

As he pleaded guilty, it is evident that he did not persist in the defence that would have been available if he had felt satisfied that the article had been abandoned. No doubt he was right in saying that he was sorry he had not made more inquiry.

If property has really been abandoned by the owner it is not capable of being stolen. Further, if an accused person satisfies the court that he genuinely believed the property to have been abandoned he cannot be convicted of stealing it, since he did not act fraudulently and, not believing that there was an owner he could not have intended to deprive the owner of it. A case in point is *R.* v. *White* (1912) 76 J.P. 384.

Pedestrians and Traffic Lights

By s. 14 of the Road Traffic Act, 1956, pedestrians are required to obey the signals given by a police constable in uniform who is for the time being engaged in the regulation of vehicular traffic in a road, but there is no corresponding requirement that they should conform to the indications given by traffic lights.

According to a report in the *Evening Argus* of October 13, Brighton traders are urging that pedestrians should be controlled by traffic lights. They state that a good deal of traffic congestion is caused by pedestrians crossing on uncontrolled crossings. This is not an entirely new idea because in some continental countries (and possibly elsewhere) pedestrians are required to cross only at places where there are traffic lights, and one of the supporters of the Brighton proposals stated that this has led to a substantial improvement in safety.

There is, we think, a great deal to be said for *obliging* pedestrians who are crossing at light controlled crossings to obey the lights in the same way that drivers have to. The practice of darting across, against the lights, in between moving vehicles is highly dangerous to the pedestrian and most disconcerting to drivers. But if there is to be any suggestion that pedestrians must not cross except at points controlled either by police or by lights objections will almost certainly be raised by the Pedestrians' Association and others. It would be quite impossible to have enough traffic lights or policemen to avoid pedestrians having to make rather long detours before they could cross. Zebra crossings do cause traffic congestions at those times when a lot of people are wanting to cross the road, and in a holiday resort like Brighton this effect may be more noticeable than in many other places. This is not to say, however, that the convenience of pedestrians must be subordinated to that of vehicular traffic; the problem is one for which no easy solution can be found and it is likely to grow as traffic continues to increase.

Seeing is Believing

We are very interested to read in a recent issue of the *Alabama Municipal Journal* of August 31, 1959, about a new method which has been adopted by the police in Tueson, Arizona, to ensure that courts get the best evidence when they are called upon to try the issue of whether a driver was so far under the influence of drink as to be unfit to drive a car. We are accustomed in our courts to hear a doctor give evidence about the tests to which the defendant was subjected and how he coped with them, but one often has the feeling that it is difficult for a doctor, in giving such evidence, to convey to the court everything which he saw and which influenced his decision whether the defendant, in his view, was or was not fit to drive a car.

In Tueson the doctor has no such difficulty. A cine-camera installed in the police station is focussed on the defendant from the time of his arrival, and sound equipment records what is said to and by him and, of course, how he says it. He is asked to pronounce such words as "methodist," "episcopal" and "electricity"; he is asked to repeat the well known old tongue twister "around the rugged rock the ragged rascal ran." He then is asked to walk a straight line, to do the "finger-nose" test with his eyes closed, and to pick up coins from the floor. How much more satisfactory it would be for courts to hear and to see the results of such tests for themselves rather than have to picture them by hearing the doctor's evidence.

It is stated that the result, in Tueson, has been that not one attorney for the 36 drivers convicted since the system was introduced has pleaded not guilty for his client after he has had a preview of the film which would have been shown in court had the necessity arisen. We wonder if any police force in this country will be sufficiently interested to consider introducing this system.

Young Offenders and Prison Sentences

At p. 551, *ante*, we referred to observations by the Lord Chief Justice on the necessity at certain times and in certain circumstances to pass sentences of imprisonment on young offenders as a deterrent. Such a time was during a crime wave.

At the Bedfordshire Assizes a boy aged 15 was sentenced to 18 months' imprisonment. It was said that he had jabbed a boy aged 16 in the face with a broken bottle, the other boy having done nothing and being a stranger to the prisoner. He had previously been before a juvenile court for throwing a bottle at his six year old brother.

As the boy was under 16 years old the question of suitability for borstal training did not arise. Whether the sentence will be completed in prison or not rests with the Secretary of State, who may, if he thinks fit, authorize a transfer from prison to borstal in the case of a young offender. The power to do so is contained in s. 44 of the Prison Act, 1952. The Secretary of State exercises this discretion after consultation, if possible with the Judge or presiding chairman of the court.

Trespass on Railway

When a boy aged 14 was summoned before a juvenile court for discharging a catapult at a train and trespassing on a railway, his father complained of his son's being brought to court on such a trifling matter and, according to *The Birmingham Post*, suggested that a properly trained policeman would know how to deal with children. Asked what he would do, the father said he would kick their behinds.

To this a police inspector made the reply that then the father would sue the police for assault or something of that sort.

The inspector was, we think, quite right. It is easy to say that a cuff or a kick at the time would be a better and prompter way of dealing with a boy for such an offence than the formality of court proceedings, but there would be trouble more often than not with the parents. Either they would say their boy would not do such a thing or they would say the chastisement was too severe, and that anyhow the policeman had no right to take the law into his own hands. It just would not work, and would almost certainly worsen relations between police and public.

As to trespass on railways, it is not a matter of no importance. Boys who trespass on the lines not infrequently think it would be fun to place something on the line and see what happens when a train comes along, or perhaps throw stones at the train. The result may be serious. Besides, as has often been said, proceedings are undertaken partly in the interests of the safety of the children themselves, who are a danger to themselves and a worry to engine-drivers.

Refusal of Intercourse as Cruelty

A person is presumed to intend the natural or probable consequences of his actions, and this presumption may be applied in cases of matrimonial cruelty. As stated in *Stone* 91st edn. at p. 1156: "In committing acts which amount to cruelty it may be (but not must be) presumed that the natural consequences of the acts are intended even though the conduct is the consequence of illness and not of any spiteful or malignant intention, *Squire* v. *Squire* (1948) 112 J.P. 319; [1948] 2 All E.R. 51."

Welsford v. *Welsford and Pickard* (*The Times*, October 9), was a case in which the husband was granted a decree *nisi* of divorce on the ground of cruelty, an allegation of adultery being rejected and the co-respondent dismissed from the suit. The charge of adultery had in fact been abandoned.

In the course of his judgment, Wrangham, J., referred to the fact that the wife had become cold towards her husband and eventually stated that she was in love with the co-respondent and would like to marry him, though she was making an effort to overcome this attachment. Subsequently the wife refused to have sexual intercourse with the husband. She offered to remain and look after the home and the children and she did not yield to her passion for the co-respondent.

Natural Consequences and Intention

Proceeding, the learned Judge observed that as time went on the husband became more and more distracted and unhappy. He consulted a doctor and left the wife and had never lived with her since. The fact that she had no wish to injure her husband did not affect the matter. In the absence of evidence to the contrary, the doer of an act must be taken to forsee the natural consequences of that act. If, with that foresight, he did the act, he intended all those consequences, even though some of them might not have been desired. By her conduct in rejecting her husband in the sense in which she did reject him, the wife was intentionally even though, perhaps, regretfully, inflicting upon him the injury necessarily involved in such a rejection. If that injury amounted to an impairment, actual or potential, of his health, the wife was guilty of cruelty. The medical evidence was that the husband was on the edge of a nervous breakdown, and that if he had continued to live with the wife in the conditions then prevailing, his mental health would have been endangered. Accordingly, the wife's conduct amounted to legal cruelty.

Warwickshire Needs More Policemen

The Guardian in its issue of October 15, calls attention to an application which has been made by the chief constable of Warwickshire for 108 more policemen. In a report to the standing joint committee it is stated that the only way of reducing the county's crime figures is to ensure that there are enough policemen to prevent and detect crime and to deal at the same time with the problem of traffic control and accident prevention. The crime figures have trebled since 1938 to a peak figure of 6,513 recorded crimes in 1958. For the first six months of this year the total is 3,293.

The present establishment of the force is 596 which represents only one policeman to every 971 inhabitants of the county. The national average is one to every 752 people The standing joint committee is to be recommended to ask Home Office authority for a first increase of 56 men and eight women. This would give one officer to every 895 inhabitants and would cost £82,000 a year. Later a further increase of 52 men will be requested.

It has not been possible up to the present to ask for these increases because the recruitment position was such that the strength could not be made up to the existing establishment. Recently, however, recruiting has improved and the force is now only a little below establishment.

There can be no doubt that the task of regulating traffic is nowadays a major one for any police force and must absorb more man power than ever before. If the strength of a force remains the same when both crime and traffic duties are increasing one, or both, must suffer. The cost of a modern police force is considerable, but if the public wants the protection and the help which it should have it must be prepared to pay the necessary cost of an adequate force.

Please Drive Me Home, I'm Drunk

The *Evening Argus* in its issue of October 14, deals with a discussion which is going on in Brighton about a proposal by one of the councillors that a driver who realizes that he has had too much to drink should be able to telephone to the police and be driven home, in his own car, for a fee of £2.

According to the report the chief constable is opposed to the scheme and the watch committee have decided that they cannot support it. It is certainly, in this country, a novel proposal. The chief constable wonders why it should be restricted to drunken drivers. Why, he says, should someone who has spent his money and cannot pay for a conveyance home not be able also to telephone to the police. His plea would be that he was tempted to take and drive away a car and would the police either advance him his fare or bring their " get you home " service into operation.

As we understand it the author of the proposal urges that in the interests of road safety it would be far better that a driver who realizes that he has drunk too much should be able to call on a " get you home " service than be tempted to drive home himself. To say that he can telephone for a taxicab is not a complete answer because that does not solve the problem of getting his car to his home or wherever he is going.

Our first reaction to the proposal is to agree with the chief constable that this is not a job for the police. Whether there is scope for such a scheme run by garages we do not know. It would certainly be better if a driver could ask someone to drive him home rather than risk driving himself in such circumstances, but it would mean that competent drivers would have to be always available and would have to be paid by the garage whether they were called out or not, and the demand might well be too spasmodic to justify the expense which would be involved. Moreover there might be difficulties about insurance in the case of drivers whose policies allowed only

certain named persons to drive. We shall be interested to learn whether any more is heard of this "drive me home" proposal.

Bait Advertising and Switch Sales

The Retail Trading-Standards Association has asked members of Parliament, women's organizations, and other bodies which have the means of influencing the housewife, to give publicity to what is known loosely as "bait" advertising and "switch sales"—we quote from the news letter of the Standing Conference of Women's Organizations. What usually happens in these cases is that an advertisement appears in a newspaper or magazine offering reconditioned articles for sale at very low prices. A reader who is a potential buyer writes to the firm for details which are not in fact sent but instead a card of acknowledgement precedes a visit by a representative who has been specially trained for the purpose. In one case someone seeing an advertisement about reconditioned television sets for £29 was told by a visiting salesman a month later that there were no £29 sets left and "they were no good anyway" but could he interest the woman in a £71 set which could be purchased easily by a few shillings a week. The wife signed the agreement, for her husband, without either of them reading it; a deposit was paid and the set installed. Later they were surprised to find that the agreement provided for payment of £3 9*s*. 10*d*. a month for two years. They asked for the set to be returned but were told that if they did so there would be liability to half the purchase price, which is a requirement of the Hire Purchase Act, 1938. It was only after the matter had been taken up by the citizens advice bureau that the firm agreed to accept the set back without any liability. Many similar cases have been dealt with by citizens advice bureaux in different parts of the country. Advertisements having these results may well be damaging to the newspaper or magazine in which the advertisement appeared, so those who feel that they have been victimised in this way should write to the journal. If an advertisements makes an offer of a certain article it ought to be possible to assume that particulars will be sent or even a statement that all the articles advertised had been sold. But if there is no such reply and a smart salesman calls offering something else at a higher price suspicion should be aroused. Unfortunately, however, it is usually the wife who, in her husband's absence, is victimised in this way.

Mental Health Services

The Minister of Health has taken an important step by making an order bringing into operation ss. 1 and 149 of the Mental Health Act, 1959, to the extent necessary to repeal the provisions of the Lunacy Act, 1890, which prevent hospitals from receiving mentally ill patients informally without powers of detention. Until, however, further provisions of the Act relating to the new arrangements for the detention of patients in hospital are brought into operation, the existing arrangements for the admission of voluntary, temporary and certified patients under the Lunacy and Mental Treatment Acts will continue alongside the newly authorized informal arrangements. Since early in 1958 patients have, in all suitable cases, been admitted informally without certification to mental deficiency hospitals and certified institutions, but not to mental hospitals.

It is explained in a circular to local health authorities that informal admission to mental hospitals will, as in the case of general hospitals, usually be arranged by the patient's own doctor, or by the hospital itself where the patient is attending the out-patient department. The local health authority mental health staff may, however, often be associated with the arrangements for admission. Hospital authorities have been informed that it should be standard practice to notify the discharge of patients to general practitioners and, in suitable cases and with the patient's consent, the local health authority.

The Minister has stated that it will be some months before the necessary preparatory work is completed to enable him to bring into force the provisions of the Act relating to patients who are subject to detention while in hospital. When, however, he does so, the procedures for "voluntary patients" will come to an end and all admissions will be informal except when it is necessary to take power to detain patients. Those responsible for mental hospitals have been asked to undertake a review of present patients, whether voluntary, temporary or certified, and to consider which patients can suitably remain in hospital on an informal basis. Any patients considered to be so suitable may be discharged under the Lunacy and Mental Treatment Acts and Mental Treatment Rules. The Minister has, however, been advised that these rules do not apply to patients admitted informally or remaining in hospital informally.

Another step by the Minister towards the coming into operation of the Act is a direction to local health authorities to submit to him, by not later than April 1, 1960, proposals for making arrangements under s. 28 of the National Health Service Act, 1946, for the prevention of mental disorder and the care and after care of persons suffering from mental disorder. In a circular to local health authorities it is stated that the Minister expects that by the time the new proposals are approved by him and come into effect, ss. 6 and 8 of the Mental Health Act will have been brought into operation. A copy of the proposals of the local authority must be sent to voluntary organizations providing services in the area of the kind dealt with in the proposals and to any other local authorities in the council's area.

Prevention of Accidents

It is the policy of the Royal Society for the Prevention of Accidents to concentrate periodically on special kinds of accidents. The theme of the summer campaign was "holiday accidents" as this is the time of the year when the incidence of out-door, around-the-home, and holiday accidents is at its highest. There are in total less serious accidents during the summer but they are more diverse in character than in winter and account for a high number of preventable non-fatal accidents. One of the useful posters used in the summer campaign was one drawing attention to the problem of dangerous litter especially broken glass. While broken glass on roads and footpaths beside the highway is generally swept up—sometimes later than sooner—it would be impossible to clear up systematically broken glass from fields and beaches. The first aid posts provided so generously by the British Red Cross Society and the Order of St. John at beaches and at sports events, agricultural shows and so on, have much of their work through broken bottles. Evidence for a prosecution is difficult but it would be salutary if the public helped the police more in this matter.

The winter campaign of the society is to be on "falls in the home." During the first three months the campaign will concentrate on falls of the elderly, whilst the second three months will deal with falls of a more general nature. This is a matter on which there is always an interesting and informative chapter in the annual report of the Ministry of Health.

CHANGES IN THE LAW RELATING TO ILLEGITIMATE CHILDREN

[CONTRIBUTED]

The Legitimacy Bill survived the attack made upon it in the House of Lords and the Act received the Royal Assent on July 29. It duly came into operation on October 29, 1959, and makes the following changes:

1. All children born out of wedlock will be legitimated if their parents later marry or have already married, whether or not that parent was married to a third party at the date of the birth, but to effect such legitimation, the father must have been or be domiciled in England at the time of the marriage;

2. Children of a void marriage, whenever born, shall be treated as the legitimate children of their parents if at the time of their begetting or of the marriage, if later, both or either parent reasonably believed that the marriage was valid and the father was domiciled in England at the time of the birth or, if he died before the birth, immediately before his death;

3. Orders for custody of, and access to illegitimate children may be made under the Guardianship of Infants Acts on the application of either their father or their mother, although maintenance cannot be awarded under those Acts;

4. An application for an affiliation order may be made by a woman who was a single woman at the date of the birth of the child whether or not she is a single woman at the time of the application; and

5. Proceedings for an affiliation order are to be " domestic proceedings " under the Magistrates' Courts Act, 1952, s. 57, although proceedings to vary, revive, revoke or enforce an affiliation order will not be.

These changes will now be discussed in more detail.

Legitimation by Subsequent Marriage

The Legitimacy Act, 1926, s. 1 (1), provides for the legitimation of a child born out of wedlock if his parents later marry and the father is at the date of the marriage domiciled in England (a term used to include Wales). Section 1 (2) of that Act provided, however, that s. 1 (1) should not operate to legitimate a person whose father or mother was married to a third party when the illegitimate person was born. The Legitimacy Act, 1959, s. 1, repeals s. 1 (2) of the Act of 1926 and declares in effect that on the commencement of the new Act (October 29) illegitimate children whose parents have already married without securing their legitimation because of s. 1 (2) shall be legitimated. If the parents marry on or after that day, the legitimation is effected on the day of the marriage. The father must, however, have been or be domiciled in England at the date of the marriage although the Legitimacy Acts will not operate to prevent the child's legitimation by the law of the country of the father's domicile at the date of the marriage, if it is outside England (Legitimacy Act, 1926, s. 8).

Rights of succession and the devolution of property in respect of legitimated persons are dealt with by the Legitimacy Act, 1926. The new Act will affect the maintenance of children previously illegitimate because of s. 1 (2) of the Legitimacy Act, 1926. If maintenance was desired in respect of such children, the mother had to obtain an affiliation order against her own husband, and, if she was not a " single woman " *quoad* him, she could not do so (*Mooney* v. *Mooney* (1952) 116 J.P. 608; *Kruhlak* v. *Kruhlak* (1958) 122 J.P. 140). Such children being now legitimated, their mother can now obtain maintenance for them from her husband under the Guardianship of Infants Act, 1925, s. 3 (2), or, if her husband has committed a matrimonial offence, under the Summary Jurisdiction (Separation and Maintenance) Acts. She could always obtain maintenance for such children in proceedings for divorce, judicial separation or nullity (*Galloway* v. *Galloway* [1956] A.C. 209) and, since the coming into operation of the Matrimonial Proceedings (Children) Act, 1958, s. 1 (4), in proceedings in the Divorce Court for neglect to maintain under the Matrimonial Causes Act, 1950, s. 23. The effect of *Mooney* v. *Mooney*, *supra*, is now spent save in those rare cases where the father's non-English domicile has resulted in the child not being legitimated by the parents' marriage. The legal advisers of local authorities and of the National Assistance Board will also note the new class of legitimated children under s. 1 and under s. 2, *infra*, as if the payment of maintenance for such children is sought to be ordered against their parents, they should, it is submitted, no longer proceed for affiliation orders. Instead they should proceed for contribution orders under the Children and Young Persons Act, 1933, s. 87, and the National Assistance Act, 1948, s. 43. Under those last-mentioned sections there is no statutory requirement of corroboration nor is the mother's evidence essential.

Children of Void Marriages

By the Legitimacy Act, 1959, s. 2, the child of a void marriage whether born before, on or after October 29, 1959, shall be treated as the legitimate child of his parents if at the time of the act of intercourse resulting in the birth (or at the time of the celebration of the marriage if later) both or either of the parties reasonably believed that the marriage was valid. By s. 2 (2) this provision applies only where the father of the child was domiciled in England at the time of the birth or, if he dies before the birth, was so domiciled immediately before his death; there is no saving in the statute for legitimation by foreign law where the father was not domiciled in England. " Void marriage," by s. 2 (5), means a marriage, not being voidable only, in respect of which the High Court has or had jurisdiction to grant a decree of nullity, or would have or would have had such jurisdiction if the parties were domiciled in England. A marriage may be void because it is bigamous, or because one of the parties is under 16 years old or because of consanguinity or insanity or failure to observe some of the necessary forms and ceremonies. Children of such a marriage would formerly have been illegitimate, although children of a marriage which is merely voidable and not void and children of a second marriage after a decree of " death and dissolution " are legitimate (Matrimonial Causes Act, 1950, ss. 9 and 16).

The test whether children of a void marriage are to be treated as legitimate is the " reasonable belief " of one or both of the spouses that the marriage was valid, the time of intercourse being the time at which such belief must be held. It might be thought that most people's minds at such a time would be concerned with other matters than the somewhat lengthy provisions of the Marriage Act, 1949. It is submitted that the term should be construed subjectively rather than objectively and the test is what the person in fact reasonably believed not what the reasonable man on the Clapham omnibus would believe. It is further submitted that a person can hold a reasonable belief and yet be mistaken in law. Even the views of the eminent Judges in the Court of Appeal as to what the law is are sometimes shown to be wrong by the House of Lords, but surely no-one can say that they do not " reasonably believe " that the law which they are expounding in their judgments is correct.

The statute makes express provision, as will have been noted, for cases where a baby has been born out of wedlock and the parties have sought to legitimate it by later marrying. A reasonable belief in the validity of that marriage will result in the child being treated as legitimate.

The new section will necessitate careful inquiries being made by solicitors acting for mothers seeking maintenance for children of void marriages because, if there was no reasonable belief in the validity of the marriage at the relevant time, proceedings for an affiliation order will have to be taken rather than proceedings under the Guardianship of Infants Acts. The Summary Jurisdiction (Separation and Maintenance) Acts will never apply because the parties are not married to each other, unless they have subsequently contracted a valid marriage. The Guardianship of Infants Acts will be available where there was a reasonable belief that the marriage was valid; they do not require that the parents shall be married to each other but only that the child be legitimate. Proceedings in the High Court for a decree of nullity can also be brought and in such a case it would seem to be unnecessary to inquire into the parties' beliefs as to whether the marriage was valid; the High Court can award maintenance for the children under the Matrimonial Causes Act, 1950, s. 26. The marriage being invalid, proceedings for divorce, judicial separation or on the ground of neglect to maintain are obviously inappropriate.

Where it is decided to take proceedings in a magistrates' court for an affiliation order or, as the case may be, for maintenance under the Guardianship of Infants Acts in respect of a child of a void marriage—inquiry into the " reasonable belief " will have indicated which of the two is the appropriate course—the mother may find herself being questioned in court as to such belief for the court may think the other course is the appropriate one. She may even find herself being pressed into admitting bigamy, if she does not claim her right to refuse to answer incriminating questions in time. If she does claim the latter right, she may well find her case is thrown-out. Many problems can arise in such a case and it is impossible to do more in this article than draw attention to the possibility of their arising. The belief in the validity of the marriage need not have been held by both parties; it suffices if one of them held it and the other seemingly may claim in all proceedings that the child be treated as legitimate even though that other at all times knew the marriage to be invalid. If a child can be shown to be legitimate by virtue of s. 2, this gives the advantage that proceedings for an affiliation order with their disadvantages of time-limit, corroboration and so on are unnecessary and proceedings under the Guardianship of Infants Acts (where there is no time-limit) can be taken.

Section 2 (3) provides that the section, so far as it affects the succession to a dignity or title of honour, or the devolution of property settled therewith, applies only to children born after October 28, 1959, and that it does not affect any rights under the intestacy of a person who dies before October 29, 1959, nor the operation or construction of any disposition coming into operation before that day, save to avoid severance from a dignity or title of honour of property settled therewith.

Custody and Guardianship of Illegitimate Children

It was held *In re C.T.* [1957] Ch. 48; 120 J.P. 566, that orders for custody and maintenance of illegitimate children cannot be made under the Guardianship of Infants Acts. The Legitimacy Act, 1959, s. 3 (1), will authorize the court to make orders for custody of, and access to an illegitimate child on the application of either its father or its mother under those Acts but by s. 3 (2) no order for maintenance of an illegitimate child can be made under them. Maintenance must still be sought by an affiliation order. It will be inappropriate for the mother to ask for custody or for the father for access on the making or variation of an affiliation order; separate proceedings under the Guardianship of Infants Acts must be brought. Orders for custody and access can be sought in the High Court, county court or a magistrates' court and the latter court need not be the same one as made the affiliation order, if there is one.

By s. 3 (3), the father of an illegitimate child who has a custody order pursuant to s. 3 (1) shall be treated as the lawful father for the purposes of s. 4 (Rights of surviving parent as to guardianship) and s. 5 (Power of father and mother to appoint testamentary guardians) of the Guardianship of Infants Act, 1925, but an appointment of guardian by him under s. 5 (1) of that Act shall be of no effect unless he is entitled to the custody of the infant immediately before his death.

Applications for Affiliation Orders

A woman who is married and living with her husband could not previously obtain an affiliation order against the father of an illegitimate child born to her, for the Affiliation Proceedings Act, 1957, s. 1, allows proceedings only by a " single woman." While she remained in cohabitation, actual or implied, with her husband, there would be no way for her to obtain maintenance from the father, unless she had transferred to her the benefit of an affiliation order obtained under the Children Act, 1948, s. 26, or the National Assistance Act, 1948, s. 44.

The Legitimacy Act, 1959, s. 4, has made an important change. It provides that an application for an affiliation order may be made by a woman who was a single woman at the date of the birth of the child whether or not she is a single woman at the time of the application. There is no change in the definition of " single woman " and the term will presumably bear the same meaning as respects a mother at the time of the birth and at the time of application. Thus, a woman who, at the time of the birth, was a widow or a spinster or whose marriage had been dissolved or annulled or who, though married, was apart from her husband in such circumstances as to make her a " single woman," will be able to obtain an affiliation order notwithstanding that, by the time of her application, she has married or, as the case may be, resumed cohabitation with her husband. A mother who is a " single woman " at the date of her application will continue to be entitled to an affiliation order, whether or not she was one at the date of the birth, subject to proof of the child's illegitimacy.

Section 4 makes special provision to ensure that a mother whose marriage has been void because of her or her husband's non-age may apply for an affiliation order whether or not she is married when she applies. Children of such a marriage in fact will often be legitimate by virtue of s. 2, *supra*.

Section 4 makes no change in the time limits laid down by the Affiliation Proceedings Act, 1957, s. 2. A mother must bring her proceedings within 12 months of the birth, unless (*a*) the father has paid money for the child's maintenance within 12 months of the birth or (*b*) he has ceased to reside in England within that time; in such cases she may apply at any time. A mother who was single at the time of the birth of her child and has since married without obtaining an affiliation order will be unable to take advantage of the change made by s. 4 if the birth was before the first moment of October 29, 1958, unless exceptions (*a*) or (*b*) apply. If the birth was on or after October 29, 1958, she must bestir herself to make her application within 12 months of the birth; thus, she could apply for a summons on October 29, 1959, in respect of a child born on October 29, 1958, but, if she did not apply on that day, she will be barred by effluxion of time. Solicitors who have had to advise married women in the past that their status precluded them from seeking

affiliation orders may wish to look into such cases again as they may be able, now the Act is in operation, to do so; in some cases, where children were born last autumn, action may have to be taken very quickly. Nothing could be done, it is submitted, in the way of laying a complaint before October 29, 1959, but, if the complaint is laid within the time-limit, the hearing can be outside it.

Affiliation Proceedings as Domestic Proceedings

The Legitimacy Act, 1959, s. 5, provides that the proceedings which are domestic proceedings under the Magistrates' Courts Act, 1952, shall include those on an application for an affiliation order under the Affiliation Proceedings Act, the National Assistance Act and the Children Act, 1948 (other than proceedings for the enforcement, revocation, revival or variation of an affiliation order). Proceedings for an affiliation order must therefore be heard in a court from which the general public are excluded and before not more than three magistrates, including, if practicable, a man and a woman. The assimilation to other domestic proceedings is not complete, however, for all proceedings for variation, revival or revocation of an affiliation order will continue to be heard in open court, whether they relate to the payment of money or not. There will be few that do not so relate.

It is submitted that the appeals committee of county quarter sessions, when hearing an appeal against the making or refusal of an affiliation order, do not have to sit as if they were a magistrates' court hearing domestic proceedings. No statute has been found which makes such a requirement and it would clearly be impossible for the recorder of a borough to constitute himself (or herself) into a court which includes, " so far as practicable, both a man and a woman."

The view is advanced at 112 J.P.N. 505 that, if more than three magistrates sit in a magistrates' court for domestic proceedings, their decisions may be invalid. G.S.W.

WARD BOUNDARY INQUIRIES

Whilst all clerks of local authorities are familiar with ordinary inquiries directed by a Minister, ranging from loan sanctions to planning appeals, a form of public inquiry which does not come into their everyday experience arises in boroughs outside London under s. 25 of the Local Government Act, 1933. This section provides for the division of a borough into wards where wards do not already exist; for altering the number of wards; for altering ward boundaries; for altering the number of councillors in a borough, and for consequential elections. A town clerk may go through the whole of his municipal career without ever having to deal with a case under s. 25 of the Act of 1933; this is perhaps why we have in the last few years received several questions about the method of presenting the council's proposals at such an inquiry. The machinery by which the section works is that a petition is presented to the Queen by the borough council; the Home Secretary appoints a commissioner, and the commissioner prepares a scheme to give effect to the petition, after holding any local inquiry which he deems necessary.

One vital point should be noticed here. From newspaper reports of contested inquiries it seems that not infrequently the opposition, corresponding normally to a minority on the town council, regard the commissioner as a court of appeal from the decision of the majority as expressed in the petition. They may even invite him to reject the petition altogether. The commissioner's duty, however, is expressed by s. 25 of the Act of 1933 to be to prepare a scheme to give effect to the petition. He cannot refuse to do so. For example, the council may want a larger number of wards. The petition must be expressed as asking for one or more of the things set out in the section, so that they cannot in terms ask in the petition itself for an " increase " in the number of wards, although the petition is always accompanied by more detailed proposals, which will show that an increase (not a decrease) is desired. The commissioner's scheme must then alter the number of wards, because this is the prayer of the petition, but he is not bound to do so in the manner proposed by the accompanying document. In that document the council ask, let us say, for 10 wards instead of eight. The commissioner can give them nine or 11, if he thinks 10 is the wrong number. He could even give them seven, if he thought the existing eight too many—because this would be altering the number. What he cannot do is leave the number as it is. If on the other hand the petition asks for an alteration of boundaries of the wards, and for this alone, the commissioner cannot increase or decrease the number of wards or the number of councillors. So again, it may be urged on the commissioner, and he may be convinced, that an alteration in the number of wards or of councillors or both is so far reaching in effect that there ought to be a fresh election of the whole council, but he cannot provide for this in his scheme unless it has been included in the prayer of the petition. The plan of s. 25 evidently is that the substance of the scheme shall have been hammered out by the council itself before the petition is presented. Their decision is not final, but it is for Her Majesty in Council, not for the commissioner, to reach a conclusion upon the question whether to give effect to the petition. She can by subs. (3) reject it *in limine* if it appears to her that it ought not to be entertained, but otherwise it stands referred to the Home Secretary, the machinery above indicated is set in motion automatically, and a scheme to give effect to the petition has to be prepared.

This however does not mean that the public inquiry is meaningless, or that the minority upon the council must refrain from further opposition once the council's petition has been sent forward. They have a right, as have bodies of electors outside the council, to be heard at the inquiry. Section 25 states that Her Majesty in Council has power to reject or modify the scheme, after it has been prepared by the commissioner, but it is unlikely that the Privy Council would do either, upon the basis of objections which had not been voiced at the public inquiry. All objections should therefore be fully stated; the commissioner will then prepare a scheme to give effect to the petition, but by modifying details, *i.e.* departing from the council's manner of securing what they have prayed for, he may be able to do something towards meeting the wishes of objectors.

Further he has the power to report upon the scheme and his inquiry. The section does not require him to do so; it would be satisfied if he merely sent his scheme to the Home Secretary (and to the town clerk) with a printed compliments slip.

But the making of a report has always been customary, and the Home Secretary announced this year that it will in

future be made public, in accordance with the new practice after the Franks Committee's recommendations. In the report the commissioner can say whatever he thinks justified, about the petition and about the merits of any opposition, as well as explaining the scheme which he has prepared. It is therefore open to him to recommend that the Home Secretary should move Her Majesty in Council to modify or even to disallow the scheme, if—in an extreme case—the opposition have been able to satisfy him at the inquiry that the council's petition ought to fail.

At the inquiry there is no set procedure; each commissioner appointed under the section controls inquiries held by him in his own way. These commissioners are chosen from a list of members of the bar maintained in the Home Office. Inquiries are also held on behalf of the Home Secretary for the purposes of s. 11 of the same Act, but under that section the persons appointed are not "commissioners"—the responsibility of decision rests with the Home Secretary and not with them. The same is true under the London section corresponding to s. 25 of the Act of 1933.

The holding of a local inquiry under s. 25 is not a statutory necessity. The section directs the commissioner to prepare a scheme, and we have heard of the preparation of a scheme without a local inquiry at all.

Such occasions are rare for the reason, no doubt, that commissioners have taken the view, which we ourselves endorse, that this is the sort of thing about which the local public ought to have an opportunity of expressing its opinion, even though the local authority itself has taken full steps to make sure that its proposals are generally acceptable. Section 25 of the Act of 1933, which applies only to municipal boroughs, has in substance come down from earlier days, and in the Bill for that Act it was deliberately left as far as possible unaltered. The central point of the procedure is that, when a commissioner is appointed, it is for him to prepare a scheme and send it forward; the Home Secretary from that point onwards is on the face of the section only a channel for passing the commissioner's scheme forward to the Privy Council; we say "on the face of the section" because the Home Secretary, as a Privy Councillor, is entitled to give Her Majesty such advice as he thinks proper in regard to the scheme, and can ask the Law Officers of the Crown to advise him and the Privy Council, if he has a doubt about any provision which the commissioner has inserted in the scheme. At the present day, town clerks normally consult the Home Office in advance, and frame the detailed proposals for giving effect to the council's petition upon the basis of a model scheme issued from the Home Office—an innovation in 1957, which saves labour on the commissioner's part. Before he actually signs the prepared scheme, the commissioner also normally shows his scheme in draft to the Home Office, so that greater uniformity is achieved than was customary before 1939, in the manner of describing boundaries and adjusting consequential matters. Once the scheme is prepared, and forwarded by the commissioner to the Home Secretary for transmission to the Privy Council, the commissioner is *functus officio*, but the Queen on the advice of the Privy Council, even though she approves the commissioner's scheme, can alter it in any way she pleases, when it is embodied in an Order in Council. In practice alterations at approval stage are rare, apart from correcting any error which has crept in.

We are however concerned in this article not so much with the preliminary steps to be taken before the inquiry, or with the fate of the scheme after the commissioner has made it, as with the conduct of the public local inquiry. Since the reason why (as we believe) the commissioners have taken the view that a public local inquiry ought almost always to be held is that this gives an opportunity of being heard, not merely to political organizations in the borough but to others; the town clerk can seldom be sure that such bodies as ratepayers' associations or chambers of commerce will not desire to be heard. Indeed the inquiry also gives an opportunity to individual local government electors to be heard, before the proposals of the town council are put into effect.

Where the business of a borough is conducted upon party lines, and the town council is chiefly divided between the two larger political parties, as is so largely found to-day, it will seldom be possible for the majority on the council to produce a non-controversial scheme except in consultation with the minority. It is very nearly an invariable practice for such consultations to take place, although we can think of some towns where the parties have remained at arm's length until the commissioner was on the scene. It is in fact so much the ordinary practice for consultations to take place that cut and dried proposals for a scheme are often presented to the commissioner with an assurance that there is no local opposition. It is not uncommon for party agents to appear at the inquiry (they may be the only members of the public who do so), and to inform the commissioner of their concurrence. An assurance that everything has been agreed can, however, not be absolute in any case, because there is always the possibility that some group of electors or some individual local government elector may appear at the inquiry and object, or at least ask questions.

What distinguishes inquiries under s. 25, and in less degree the similar inquiries directed by the Secretary of State in a metropolitan borough or in a county where county electoral divisions are being altered, is that the chance of party political difference is greater than in the general run of public inquiries which are familiar to local authorities. The town clerk may believe, and may assure the commissioner in all good faith, that the opposition party or parties on the council have been consulted and have agreed to the proposals, but a party group within the council cannot always guarantee the line which will be adopted by their party outside. Even where party discipline is tight on both sides, this does not mean that other persons who have a *locus standi* will not raise objections. We know that a strong view is taken in some quarters, that for these reasons a town clerk is often wiser not to conduct these inquiries himself: that he should instruct counsel in order that he, the town clerk, may be kept completely outside the arena of political controversy.

This however has not always been done. The reason may be that town clerks were anxious to economize, or that the parties on the council, having arrived at an agreement which was to be laid before the commissioner as being the views of the council as a body, were reluctant to spend money upon counsel's fees. The practice has thus varied. We have heard of an inquiry where the town clerk announced at the outset that he was calling no witnesses, and would himself be prepared at the conclusion of his speech to answer any questions from the public as well as from the commissioner, upon policy as well as upon facts.

This was an extreme case. It is more usual for the town clerk, where he conducts the council's case himself, to do as he would do in an inquiry under the Housing Acts or the Public Health Acts, namely to act as advocate and call one or two witnesses. Typically, in these ward boundary cases, such an official as the council's surveyor might be called to explain the details of boundaries, and to answer any questions which

it might be desired by the commissioner to put, about the drawing of the boundaries and their relation to features on the ground. The borough treasurer could similarly be called to speak about facts within his province, such as the rateable value of different portions of the borough. If the proposals were designed to give effect to future increases of population (and therefore of electorate), as well as to the state of the electorate at the moment of the inquiry, it might be appropriate to call a planning officer to speak about future trends, or something about proposed building could be included in the evidence of the council's surveyor. These are seldom matters of dispute; they are matters of fact about which an official can properly testify. More important and potentially more difficult is the position of what is commonly called a policy witness: that is to say a person who will speak not merely about demonstrable facts, but about the opinion and motives of the council, and the degree of consideration given by the council and its committees to the proposals before the commissioner.

In ordinary cases, the most suitable witness for this purpose would be the chairman of the parliamentary or general purposes committee, or whatever is the style of the committee which has prepared the proposals and brought them before the council for formal endorsement. The policy witness thus called would be open to cross-examination on the part of any objectors, and would be expected, in particular, to answer questions aimed at testing the *bona fides* of the council. He is likely enough to be asked whether a boundary has been drawn along such and such a line in order to secure the maximum benefit to his own party. The wise town clerk will be prepared for this sort of question, and make sure of having the appropriate witnesses ready to answer it. It is clearly not right that the town clerk or treasurer, or any other municipal officer who happens to have information in his hands or in his department which could assume a political tinge, should be liable to cross-examination about political matters.

Moreover, the difficulty of the official's position is increased if opposition by a political body, or by such a body as the chamber of commerce, is professionally presented. It may be difficult for an outsider to realize why a change in the position of a boundary line should be assumed to affect the result of municipal elections, but experience shows that the party agent in a locality, and sometimes the party leaders in the local authority itself, are quite convinced that this or that placing of the boundary will have good or bad results when the votes are cast.

If the town clerk has prepared his case properly, it should be found that his colleagues, such as the surveyor and the treasurer, and (most useful of all in many cases) the chief clerk in the town clerk's own department who has had the preparation of the case and knows all about the existing polling districts, can restrain themselves from anything that could possibly be political, and will speak only upon facts. It is then for an elected person, in the shape of the committee chairman or other policy witness, to deal with any matters which are controversial or can involve suggestions of *mala fides*. It is for this sort of reason that suggestions are sometimes made that the town clerk ought to brief counsel to present the case. If the local authority's finance committee, or anybody else who is concerned particularly for economy of the borough council's funds, is thoroughly apprised of the reasons for bringing counsel in, there is less likely to be objection. Of course the town clerk is perfectly competent to re-examine his own policy witnesses about facts, or tendencies of population and so forth, and to cross-examine any witnesses who are called by the opposition. The question is not of his ability to do it but of the propriety of his doing it, when political implications come in it. It is all too likely where a council is split upon political lines that, if the proposals have not been thoroughly thrashed out and agreed in advance, there will be allegations by the minority of sharp practice on the part of the majority, met by suggestions made by the policy witness that the minority are attempting to alter the council's proposals for their party's benefit.

It is true that the town clerk himself, or his deputy who is accustomed to conducting local inquiries of all sorts, may for personal reasons be reluctant to introduce counsel, who will have to be briefed (which means that the town clerk or his staff will have to do just as much work as if he was himself conducting the case), with the possibility that from ignorance of local circumstances counsel may make mistakes which the town clerk would not make. But awkward points may have to be faced, and, where the advocate presenting the council's proposals in a ward boundary inquiry is likely to be obliged to defend a policy, or otherwise to step into the political arena, it may be wise for the town clerk to brief counsel rather than not to do so.

ADDITIONS TO COMMISSIONS

MERIONETH COUNTY

Owen Edwards, Delfryn, Betws Gwerfil Goch, Corwen.
Mrs. Marie Olwen Humphreys, Medical Hall, Corwen.
Mrs. Martha Ann Humphreys, Brookside, Corwen.
Thomas Evan Jenkins, 5 Sea View Terrace, Aberdovey.
Dr. Oswald Glyn Jones, 14 The Square, Blaenau Ffestiniog.
Owen Thomas Jones, Dolrhedyn, Tanygrisiau, Blaenau Ffestiniog.
Miss Gwyneth Morfydd Palmer, Mon Abri, Tegid Street, Bala.
Richard Ellis Meuric Rees, Dyffrynglyncul, Towyn.
Mrs. Kathleen Robinson, Plas Edwards, Towyn.
John Saer, Ronville, Bala.

RICHMOND BOROUGH

Dr. Thomas Sturrock Butters Dick, M.B., Ch.B., 17 Marchmont Road, Richmond, Surrey.
Joseph Henry Watt Mears, Broom Warren, Broom Road, Teddington, Midd.

SALOP COUNTY

Mrs. Helena May Coles, National Provincial Bank House, High Street, Bridgnorth.
Brig. Algernon George William Heber-Percy, D.S.O., Hodnet Hall, Hodnet, Market Drayton.
Lt.-Col. John Roger Kynaston, D.S.O., M.C., Hardwick, Ellesmere.
Lt.-Col. Stephen Snow Murcott, The Old Rectory, Neenton, Bridgnorth.
Stanley Oscar Myers, Condover Hall, Condover, Shrewsbury.
Reginald Edward Nutt, Belvedere, Golf Links Lane, Wellington, Salop.
Lt.-Col. Michael Vane Sowerby, M.C., Wroxeter Grange, Shrewsbury.
Thomas William Owen, 11 Merridale Crescent, Wellington.
Mrs. Margaret Mary Walker, Birch Farm, Kinlet, Bewdley, Worcs.
George Frederick Williams, The Slip, Buildwas, Ironbridge, Salop.
Mrs. Francis Hope Congreve Hall, Hales Hall, Market Drayton.
Brigadier Adrian Lewis Matthews, O.B.E., M.C., Bishton Manor, Albrighton, nr. Wolverhampton.
Ernest Pessall, 23 West Street, St. Georges, Oakengates.

SURREY COUNTY

Sir Richard Ernest Yeabsley, C.B.E., 24 Wimbledon Close, S.W.20.

WOLVERHAMPTON BOROUGH

John Henry Plant, Wightwick Leys, Compton, nr. Wolverhampton.

PROBLEMS OF RIVER BOARD FINANCE

The River Boards' Association annual Year Book is an excellent publication. It contrives to be both interesting and informative and its three honorary editors, Messrs. Davison, Spiller and Wild, are to be complimented on their work. Mr. Wild, Treasurer of the Trent River Board, is the financial editor and we quote here from the figures he has assembled.

Complaints are made from time to time by local authorities about their lack of control over boards and about their precepts. It is important, however, in these matters to preserve a sense of proportion. The 1958 Year Book is, at the time of writing, the latest published: it contains a summary of the accounts for 1956–57. In that year the net revenue expenditure of the boards in England and Wales chargeable to rates was £4½ million, more than £½ million of which was for the River Thames and Lee Conservancy Catchment Boards. By comparison total local authority revenue expenditure on rate fund services in 1956–57 was £1,315 million. In fact in that year seven authorities spent as much or more on education in their respective areas as was spent on all the activities of river boards in the whole of the two countries.

The aggregate amount for which a river board precept is issued in any one year may not exceed the amount which would be produced by a rate of 4*d.* on the council's area within the river board area, except with the consent of the majority of the members of the board who represent county or county borough councils. Also, in agreeing a loan the board may, with the same consent increase the sum of 4*d.* by a specified amount. In 1956–57 only 13 out of 32 river boards precepted for amounts more than 4*d.* The highest were the Lincolnshire and Welland boards which both levied precepts of 8½*d.* On the other hand, seven boards' precepts were below 3*d.* In a good many local authorities, of course, an Exchequer equalization grant was available to meet part of the sum precepted.

In the past some county boroughs, particularly some seaside towns, have complained about the amounts they have had to pay to the boards on the grounds first, that their rateable values are higher than those of other authorities within the boards' areas and, second, that insufficient levies are made on internal drainage boards. The first argument is difficult to sustain against the general background of the accepted system of raising rate borne expenditure. It is no more right or wrong that river board expenditure should be raised in this way than that county council expenditure should. The many "rich" county districts have to pay a proportionately larger share of the cost of county provided services than do the poorer areas. This would be true even if the services had to be provided at the same standard in all areas but in fact provision is required on a larger and more expensive scale in the poorer areas which therefore benefit doubly. If the argument is carried a stage further the richer inhabitants of any one local authority area should object to paying their rates because the benefit of the expenditure will go largely to the poorer inhabitants of the area. Carried to its logical conclusion this line of argument would mean that all money required should be raised by a poll tax.

The question of levies on internal drainage boards is not so clear. It will be recalled that the causes and effects of the East Coast floods of 1953 were examined by the Departmental Committee on Coastal Flooding which reported in 1954. The committee advocated the continuance of the present administrative system but did express the view that the first charge for works designed to prevent the flooding of wide areas, mainly rural and agricultural, should be upon the beneficiaries through the medium of the internal drainage boards concerned. Section 21 of the Land Drainage Act, 1930, requires the contribution to be demanded to be such as the river board considers fair. The interpretation of this word may be a matter of considerable difficulty. In coming to a decision a board should take into account the benefits conferred within an internal drainage district by the river board's works and the ability of the people within the district to pay.

At March 31, 1958, the membership of river boards was 917, appointed to represent:

County Councils	366
County Boroughs	199
Drainage Interests	194
Fishery Interests	124
Various Ministries	32
National Coal Board	2
	917

In looking at figures it is important to know exactly what a contribution of £*x* means to the internal drainage board area in terms of rate poundage. We know of one such where the raising of a sum of £500 required a rate of 17*s.* There are wide differences between areas in the proportion of land drainage expenditure met by internal drainage boards partly due of course to differing local circumstances.

These figures for 1956–57 are given in the Year Book:

River Board	*Expenditure met by*	
	I.D.B.'s	*C.C.'s & C.B.C.'s*
	£	£
East Suffolk and Norfolk	18,800	130,500
Essex	39,300	329,700
Yorkshire Ouse	15,900	322,300
Great Ouse	111,300	117,500
Lincolnshire	94,700	101,900
Welland	46,000	23,200

The departmental committee said: "Circumstances of drainage districts vary very widely. It is also a fact that all internal drainage boards have heavy commitments of their own. . . . We do not think that a river board would be justified in increasing the precept upon local authorities until, having taken all the relevant factors into account, it was satisfied that it had secured a proper contribution from internal drainage districts benefiting from the sea defences." It would be interesting to have figures of the sort quoted above analysed, compared and explained.

The departmental committee also recommended that the maximum precept which boards should be empowered to levy without their consent on counties and county boroughs should be increased to 6*d.* This the local authorities opposed and the old limit remains.

In addition to the difficulties of apportioning liabilities between different bodies of ratepayers there is the other important question of grants from the National Exchequer. Grants are of varying percentages, assessed by the Ministry of Agriculture and Fisheries and approved by the Treasury. In differing local circumstances this is probably the method likely to secure the greatest measure of justice: the tables prepared by Mr. Wild reveal large differences in the percentage of expenditure met from

grants in different areas. The financial relationships between the Ministry and the boards have improved of late years and some of the shackles have been struck off. It is no longer necessary to submit individual vouchers, copy pay sheets and paid cheques to the Ministry, to submit annually a statement of income and expenditure relating to the board's plant, to keep accounts of each scheme of works in a form approved by the Minister, and not now necessary for the chairman and clerk to sign applications for grant. The method and the considerations which determine the amount of grant awarded to any board are not disclosed. Similar secrecy covers the actions of the Ministry of Housing and Local Government in relation to grants for rural water supply and sewerage schemes. There is no good reason for the mystery: local authorities and river boards would be better satisfied that they were getting a fair deal if the actuating principles were disclosed. The possibility of criticism should not be a reason for undercover work: if the principles are sound the departments have nothing to fear by disclosing them.

MISCELLANEOUS INFORMATION

THE NEEDS OF YOUTH IN STEVENAGE

Magistrates, probation and child care officers as well as innumerable other bodies, official and unofficial, and individuals, are constantly probing at the problem of the use of leisure of young people, a problem that, because of the increase of this in the second half of the century, is one particularly of our time.

It is hardly surprising therefore that the committee, appointed by the Board of Administration of the Calouste Gulbenkian Foundation, in January of this year and headed by Brig. E. T. Williams to "discover, define and plan for the needs of the disproportionately high number of young people in Stevenage and other new towns," has provided few recommendations that, in their general application, would appear revolutionary. In the short time available to it, the committee has confined its inquiries to Stevenage alone, and its recommendations apply to the circumstances of that particular town, although it is probable that these circumstances will apply to other new towns not yet investigated. But that is not to say that the report or conclusions can be ignored by anyone concerned with, or interested in, the service of youth. The most significant remark in the report, is in our opinion, a statement made by a resident of Stevenage to a member of the committee; "we have no gangs now, but I greatly fear we may have them." It is against this background that we choose to consider the report.

Stevenage was the first town to be created by the New Towns Act, 1946. At its inception its population was 6,500; now it is 34,000 with an average increase of 4,000 a year, and it is expected to reach 60,000 and perhaps eventually 80,000. A very large proportion of the population consists of younger married people with young families, and as a result the proportion of young people between the ages of 15 and 21 years of age—the problem bracket—is considerably below the national average. Within the next 10 years, however, this situation will be reversed and thereafter the Stevenage figure is expected to mount spectacularly above the national figure until by 1975 will have some 130 young people between these ages, as compared with a national average of 85. The employment position in Stevenage is at present good and there are enough jobs available for boys and girls leaving school, but, the report states, it would be a mistake to view the future of juvenile employment with too much complacency. The town is an urban district within the boundaries of the Hertfordshire county council, but the development of the town is the responsibility of the Stevenage Development Corporation, which plays a crucial role in planning and layout and in determining the extent and nature of sites reserved for social amenities. These three bodies have between them a wide range of powers to assist youth work in Stevenage. Although the corporation occupies the position of the creator of physical assets, the key role in running a youth service lies with the county council, but the report states, this council has so far chosen to make only a very limited use of its powers in this respect. The total sum allocated for youth work to the sub-committee for further education, was £1,850 during the last financial year.

The problem facing the committee was therefore to make recommendations for the future, and it emphasizes that if an adequate youth service is to be set up to cope with the increasing teenage population, the start cannot be made too soon. Although a Stevenage Youth Advisory Council, which includes representatives of the youth organizations, the main public authorities and the schools, was set up in 1957, it has no official status and its funds are pitifully small. At the same time, while many of the industrial firms of the town offer generous welfare facilities for their own employees—one of these social clubs is described as "spectacular"—there is no provision specifically for youth and these clubs are not essentially the possession of Stevenage. The report mentions a responsibly held view that the very excellence of these amenities is in itself a disruptive influence in the social life of the town, in the sense that it diverts attention and energy from the neighbourhoods and the town centre to the grounds of works and factories which are closed communities in the periphery.

In its recommendations, the committee concludes that "blokes are more important than bricks," and that, in view of the urgent need to provide a cadre of trained works during the few years that will elapse before the onset of the bulge, priority must be given to establishing this cadre over the provision of accommodation. It suggests that a full time youth officer should be appointed as part of a new county youth service under the county council, and that the Stevenage Youth Advisory Council should be reconstituted as the recognized youth committee for the town. The committee sees the appointment of a youth officer as a contribution from local government which would be matched by private industry, so that the officer would have special resources, over and above local authority maintenance funds, with which to work over the next crucial years. "Great opportunities are tall orders for a young man" the report states. "If seized, it might help to set a valuable pattern for youth developments throughout the country."

With regard to accommodation the committee recommends that a site at the centre of the town be reserved for a future youth centre, but that for the present priority be given to neighbourhood youth centres which should be based on the needs of the youth of each neighbourhood. While it considers undesirable the laying down of a rigid pattern about the type of building or programme, it sets great store by the principle of "self help," particularly in the form of building one's own premises, and emphasizes both the advantages of residential accommodation, and that, where a full time warden needs to be employed, it is highly desirable that he has a fixed and adequate salary and does not have to spend time raising the money for it.

RESTRICTIVE TRADE PRACTICES

Speaking at the recent conference of the British Association, the registrar of Restrictive Trading Agreements outlined the progress made under the Restrictive Trade Practices Act and discussed the extent to which the Act appeared to be achieving what was intended. On August 7, 1959, the register contained 2,200 agreements. The parties to 380 of them had been warned by the registrar that he intended to start proceedings and following this warning, the parties to 250 had informed him that they had abandoned or were abandoning their agreements. The parties to another 350 "unwarned" agreements had also abandoned or were abandoning them, making over 600 abandoned in all. Six cases had come to trial. This figure would have been much higher if the parties to many agreements had not decided to end rather than defend them. The rate of abandonment had increased fast, showing that the judgments of the Court had a tremendous effect. The registrar expected that a high proportion of the 130 cases then pending would not come to trial. There were 1,450 agreements on which no action had yet been taken; but over 1,050 were closely connected with cases already started. Of the other 400 agreements, there might be 200 which would qualify for removal from the register under s. 12 of the Act as being of no substantial economic significance.

The registrar said he assumed that in passing the Act, Parliament intended that agreements of a registrable kind should not continue unless some good and substantial reason from the point of view of the public could be shown to justify their continuance and to outweigh any harm they might do. He suggested that by laying down with some precision the only grounds on which parties could establish that their agreements were not contrary to the public interest, the Act might appear to be limiting the arguments which they could use to defend them. But in cases already decided the Court had made it clear that their task was the ordinary task of a court of law to take the words of the Act according to their proper construction and see if upon the facts proved the case falls within them. The registrar said the most widely pleaded of the defences which the Act allowed was that the ending of the restriction would deny specific and substantial benefits or advantages to the public as consumers of goods. Under this head, parties had freedom to bring forward a very wide range of arguments, and had submitted that their agreements benefited

consumers by such means as eliminating cut-throat competition, preserving capacity; encouraging research, re-equipment and innovation; stabilizing prices and so on. In conclusion the registrar said that the Act did not appear to have precluded the Court from considering any argument which parties had advanced to show that their agreements benefited the public. Whether this meant that the Act was effectively achieving its purpose was a matter for more general consideration.

ANNUAL REPORTS, ETC.

CITY OF OXFORD
CHIEF CONSTABLE'S REPORT FOR 1958

A loss, during the year, of three in actual strength brought the figures on December 31, 1958, to 185 authorized establishment and 161 actual strength. The former figure is that which resulted after an increase had been allowed. The chief constable tries to avoid resignations by constables in the early stages of their career by seeing all candidates and explaining to them the difficulties of the police service and pressing them not to join unless they feel fairly satisfied that it is the kind of job and career they will like. Of the 13 who resigned during the year four felt that the work did not suit them and six found that the pay was insufficient. In Oxford, in particular, this latter reason is a very cogent one when the wages which can be earned locally in industry are taken into account, and the chief constable's view is that the most important factor which would stimulate recruiting is an increase in the wages of the constable.

There are increases in various branches of police work—crime prevention and detection, traffic control and accident prevention—so that the chief constable finds difficulty, with his force under establishment, in deciding where priority shall be given.

While the procedure under the Magistrates' Courts Act, 1957, is accepted as saving police time, it has the disadvantage of depriving young constables of the chance to gain experience in giving evidence, and extra care in probationary training is necessary to offset this disadvantage.

Indictable crimes totalled 2,469, 162 more than in 1957, but the number of offences known to have been committed by juveniles (136) was 127 fewer than in 1957.

Street accidents increased from 2,225 in 1957 to 2,524 in 1958. The figures for the years 1954 to 1956 inclusive were 1,389, 1,454 and 1,678 respectively, a steady increase which must cause the authorities much concern.

DORSET WEIGHTS AND MEASURES DEPARTMENT

Commenting on the de-rationing of coal which took effect in July, 1958, Mr. W. Roger Breed, chief inspector of weights and measures for the county of Dorset, draws the conclusion from the continued rise in coal stocks coupled with the continued fall in pithead output, that the price of coal, together with the attractions to be found in the use of alternative forms of fuel, had obviated the need for rationing long before the event was officially recognized.

In a county such as Dorset, far removed from the coalfields, where coal prices are some of the highest in the country, paraffin and its burning equipment have rapidly become best sellers and it is not unusual to find the dispensing of paraffin for household use being handled by coal merchants from the same vehicle as that which delivers coal.

In a number of places, says Mr. Breed, coal and other forms of solid fuel can now be purchased in sealed 28 *lb.* and 56 *lb.* paper bags and although this novel form of retail dispensing has not yet been introduced into Dorset on a commercial scale its popularity has already been tested and approved in a number of south-western counties. The mechanization of coal handling at wharves and railway sidings is, however, firmly established in the county with considerable savings in time and labour.

Mr. Breed calls attention to the use that can be made of the Merchandise Marks Acts for the protection of the consumer and also praises the work of Consumer Research Limited and the Consumers Advisory Council of the British Standards Institution.

We have all become familiar with self-service in several branches of retail trade, but it must be news to many people that, as stated in this report self-service wholesaling for members of the grocery trade seems also to have grown in popularity.

Mr. Breed again utters a reminder about articles of various kinds which are sold without any indication of weight or measure, and he goes on "in fact in the sale of many commodities, of which perhaps butchers meat and dressed poultry are typical examples, we are reliably informed that it is bad sales policy to remind the public—any more than is necessary—of the cost per pound." He has some further pointed observations about butchers' meat.

"If it is necessary to have different grades for meat under war-time rationing schemes, fatstock corporation buying and selling schemes and the export marketing schemes of other countries it is perhaps pertinent to inquire why it is possible for so much meat to end up on the butcher's counter as 'first' quality and to inquire if it would not be better for purchasers if meat which is admitted at some stage to be 'second' quality could not retain that classification, at least until such time as it is safely inside the housewife's shopping basket, at a price which accords with its actual quality rather than with that suggested by the specious and somewhat colourful adjectives of the permanent name tags which butchers are so fond of displaying on meat exposed for sale."

With regard to pre-packed foods the statistics show, judging by the number of items found to be deficient or incorrect in other respects that the percentage of error to be found in all kinds of pre-packed foods sold in the county is remarkably low and entirely satisfactory.

Many complaints of food (bread and other similar foods) containing foreign matter, *e.g.*, nails, cardboard, oil and grease, were dealt with during the year. A farmer who was found to be adding dried milk to milk sold by him to the Milk Marketing Board for human consumption was fined £200. Multiple grocers were fined £25 in respect of the sale of a sausage containing a safety pin. Wholesale food distributors were fined £50 for selling oatmeal contaminated with rodent excreta. A wholesale dairy company was fined £5 for selling a bottle of orange drink which contained broken glass.

PRESTON RURAL DISTRICT ACCOUNTS, 1958–59

Mr. F. B. Young, M.B.E., B.A., F.I.M.T.A., the clerk and chief financial officer of the rural district, reports that the accumulated balance on General District Fund account at March 31, 1959, was £51,800, almost the same as a year previously. General rate was 13*s.* 11*d.*, a reduction of 5*d.* on the previous year. The estimates for 1958–59 provided that £9,000 should be appropriated as rate aid but in the event this was unnecessary because of the high yield of rate moneys temporarily invested and because of slower progress than expected on certain sewerage schemes loan charges were less than estimated.

Capital expenditure incurred during the year on sewerage schemes amounted nevertheless to £167,000: it was considerably in excess of housing expenditure.

The housing revenue account, after crediting the council's rate contribution of £4,000 showed a surplus of £550 for the year. Accumulated balance in hand totalled £7,200. True rent arrears at March 31, amounted to only £155 out of a total collection of £63,400.

Loan debt at the year end amounted to £2¼ million the greater part of which was owing on housing account. The authority has a population of 40,300 and net loan debt equals £62 per head. Higher borrowing costs are reflected in the average rate of interest on pooled loans, now 5¼ *per cent.* It is the policy of the authority to invest superannuation fund moneys internally.

The general financial position is eminently satisfactory and chairman of finance committee councillor C. E. Harris and his fellow members must be congratulated on their work during the year.

DERBYSHIRE AUTHORITIES' FINANCES, 1959–60

The 11th annual booklet dealing with local government finance in Derbyshire is as attractively produced and as informative as usual. It is prepared by county treasurer T. Watson, F.S.A.A., F.I.M.T.A., with the help and assistance of the county district chief financial officers.

Derbyshire is a growing county. The mid-1958 estimate of population was 725,000 (a density of 1·14 to the acre) and it is estimated that in 1959–60 a penny rate will produce £32,000. Average of general rates levied was 18*s.* 11*d.*, an increase of 10*d.* over the previous year.

Total local government expenditure in the county is estimated at £26·1 million, of which rates will be called upon to bear £7·4 million. Gross expenditure on education will be £12·1 million, on housing £3·6 million, on highways £2·9 million, and on police £1·2 million. Rate subsidies in aid of housing in the county total £233,000: 19 out of 29 housing authorities put a charge upon the rates for this service. The largest is Chesterfield R.D.C. (£55,000) which has the biggest housing scheme. The highest in terms of rate levy per head of population is Clay Cross urban district (16*s.* 1*d.*).

The rating of owners reveals considerable differences in practice between authorities. Although this is a matter of local policy the decisions made have repercussions both on government grants and on the finances of other authorities in the county. The ideal would appear to be a uniform scale of allowances.

The booklet gives full information on housing, rating, rate fund expenditure and other matters. It is worth serious reading.

CITY OF WORCESTER
CHIEF CONSTABLE'S REPORT FOR 1958

Authorized strength 116, actual strength 102 are the figures for December 31, 1958, only one vacancy fewer than at the end of 1957. However, it is stated later in the report that later in the year there was a noticeable improvement in recruiting and that the chief constable hopes that by the end of 1959 the force will be approaching full strength.

Beat working has been reorganized by a reduction in numbers from 18 to 14 with small beats in the city centre patrolled on foot and larger areas in the outlying districts covered by men on light weight motor cycles equipped with two-way wireless. The chief constable is satisfied that this more flexible system is most successful.

Comment is made in the report on the large proportion of men now serving who have been in the force for a comparatively short time. At the present time only six members, including the chief and deputy chief constables, have more than 25 years' service.

Accepted crimes numbered 925, against 750 in 1957. The 1958 figure is the highest ever recorded in Worcester. Preliminary figures for 1959 indicate that the increase in crime is continuing, and the consequent importance of crime prevention is emphasized. An appeal is made to the public to help the police in this respect by using the 999 system to report without hesitation or delay any matter, however trivial, which appears to be suspicious.

Many more juveniles were dealt with for crime in 1958 than in 1957, the figures being 104 and 52 respectively. It was found that many cases arose because of poor home conditions, particularly where parental discipline and restraint were lacking. In such cases, of course, the courts can use their powers to try to impress upon parents their responsibilities for the proper upbringing and supervision of their children.

It is interesting to note that most of the school crossing patrol officers are old-age pensioners who "provide an efficient service, discharging their duties with enthusiasm."

NEWARK-ON-TRENT WEIGHTS AND MEASURES DEPARTMENT

Apart from the fact that for eight months of the year ended March 31, 1959, he was without an assistant and therefore prevented from fulfilling his statutory obligation to visit all traders at least once, Mr. R. Baggaley, inspector of weights and measures for Newark, is able to present a report showing a satisfactory state of affairs in the borough. During the course of 247 visits to various premises 7,950 articles of food were checked of which 155 were deficient. The majority of the deficiencies were due to evaporation in such foods as dried peas. During the period 526 inspection visits were made to 434 places. Seven thousand five hundred and eighty items of equipment were examined of which 177 were incorrect. The Weights and Measures (Amendment No. 6) Regulations, 1958, varied the tolerances permitted on weights and this is one reason why fewer weights were found incorrect.

EAST HAM PROBATION REPORT

A lucid and comprehensive report from this area shows that 1958 was, unfortunately, a record year for the probation department of the division. Shortage of staff and accommodation—the latter a complaint too often heard in connexion with the probation service—made the task of the probation officers exacting, but it is clear that everything was done to conduct the work on the personal lines which best ensure successful probation.

It is pleasing to have the comments of Mr. Osborne, senior probation officer, on the fallacies of the causes of crime being due to poverty, bad housing, and low living standards. As he points out, these factors are continually decreasing under modern conditions, particularly the first and especially as regards youth, who are the greatest offenders. As Mr. Osborne points out, they have almost limitless money, yet they make a thorough nuisance of themselves, and seem determined to disrupt the community, regarding anybody else's car or shop window as fair game for their depredations.

Matrimonial work continues to increase in the district and, whilst conciliation is successful in many cases, as Mr. Osborne, points out, many problems have reached too intractable a stage by the time the parties have recourse to the courts.

COUNTY BOROUGH OF MIDDLESBROUGH: CHIEF CONSTABLE'S REPORT FOR 1958

The printing dispute was responsible for our receiving this report later than usual. It contains the satisfactory news that on December 31 the actual strength of the male portion of the force (266) was within three of the authorized establishment and these three vacancies were specially reserved for cadets due to be transferred to the regular force. The women police numbered 17, six short of their establishment, but four women were awaiting appointment

It is noted that training for life-saving is somewhat hampered by the shortage of swimming bath accommodation in the town. Nevertheless the force had a very successful season in swimming competitions, and they won for the third year in succession, the "Sam Smith" trophy with 77 points, their nearest rivals having only 17.

Middlesbrough did not escape the effects of the general increase in crime. Recorded crimes numbered 3,490, with 2,021 detected and 1,149 persons prosecuted, increases of 767, 301 and 392 respectively. There was a sharp increase in stealing from shops and stalls (178 to 310), and 218 of these offences were committed by juveniles. It is remarked that more multiple stores and new methods of display and serving of goods have added to the temptation to juveniles.

Careless car owners helped to increase the number of unauthorized taking of motor vehicles from 86 to 136; "very few take the trouble to lock the doors and remove the ignition keys when leaving their vehicles."

More girls getting into moral difficulties were brought before the courts as being in need of care or protection. The 1958 total was 31, that for 1957 was 22 and for 1956 it was eight. It is suggested that parents should exercise closer supervision as to the places frequented by their daughters.

Road accidents increased from 1,799 to 1,931. The number of people killed remained at 21, but the number injured increased by 22 to 489.

Some licensees are criticized for failing to discourage prostitutes from remaining on their premises and for not preventing young persons from frequenting them. The dangers of the drunken driver are shown by the fact that in nine out of 21 such cases the matter came to light because of an accident.

DERBYSHIRE FINANCES, 1958–59

County treasurer T. Watson, F.S.A.A., F.I.M.T.A., has produced with customary celerity his excellent summary of Derbyshire accounts for 1958–59.

He takes 1949–50 as the standard year and compares the latest figures with the standard, not forgetting to point out that over the same period wage rates rose by 62 *per cent.* and the cost of living index by 48 *per cent.* Neither must the growth of population be overlooked: there was an accretion of 47,000 souls over the period. Nevertheless when allowance is made for all these factors the growth in gross expenditure is formidable—from £7¼ million to £17¼ million. Contrary to popular belief the percentage rise in education expenditure was not the highest. It was practically no more than the rises on children, police and welfare, and was exceeded by the fire service. Gross expenditure per head of population rose from £10 14*s.* to £24 1*s.*

Over the same period loan debt rose from £1,880,000 to £11,330,000, mostly on education account.

County rate was 13*s.* (only a quarter of the English counties had a rate equal to or lower than this): the average inclusive rate in Derbyshire was 18*s.* 1*d.* About a quarter of the county's gross expenditure falls to be met by the ratepayers.

In view of the high interest rates and the difficulties of raising suitable permanent loans the council continued its policy of meeting as much capital expenditure direct from revenue as government regulations would allow. In 1958–59 £390,000 was so financed.

Estimated penny rate product was £26,850. At the year end revenue balances in hand totalled £1,017,000 of which £847,000 was held as cash.

METROPOLITAN BOROUGHS ORGANIZATION AND METHODS COMMITTEE

During the year under review this committee has been commissioned by the Metropolitan boroughs of Bermondsey, Camberwell, Deptford, Greenwich, Southwark and Woolwich (which had agreed to combine in order to obtain the benefits of an automatic office using comprehensive computer and ancillary equipment) to carry out the planning and programming necessary before clerical work could be put on a computer basis.

In time, the entire financial and statistical work of the councils will be reviewed. So that each borough can benefit from the scheme as soon as possible, the work has been divided into stages, each run in parallel in five boroughs, while the experimental work on the next stage is being

carried out in the sixth. These stages are payroll, including payment of wages and the control of labour, stores activities, and transport. Each will be finally integrated into one procedure to provide management information by exception. Although this work is being carried out initially in south east London, its results are not intended to be exclusive to this one area, and the experience will be available to all constituent authorities.

The organization and methods committee believes that management today calls for modern, correctly applied techniques, and that its function is to select and provide some of these techniques after careful study of relevant conditions. Its officers should be sufficiently detached to ask questions about what had become accepted practice locally and must examine work critically and measure it in terms of effort or money. But once suggestions have been made to a council, the committee cannot just pack up and move on. Its teams bear, with the officers of the authority using its services, a joint responsibility to see the job through. During the year the committee has reviewed the scale and effectiveness of its own service, particularly with regard to the delays between the receiving of a request for its services and commencing work, and as a result has appointed two further officers for normal organization and methods work.

Since its foundation, the committee has completed 46 assignments for 22 metropolitan boroughs, and has a further 16 in hand. Reports of many of those assignments with more general application are available to other authorities, and copies of the annual report, giving details of these, may be obtained free on request to the committee at its new headquarters at Bethnal Green town hall.

ROAD ACCIDENTS, 1958

An increase in road casualties of 25,909 or 9·5 *per cent.* over the previous year are given in the report of road accidents for 1958, published by Her Majesty's Stationery Office. Caution must be used in evaluating these figures, however, since during the first five months of 1957 traffic was reduced by fuel restrictions with the result that the road research laboratory estimate the increase of traffic in 1958 to have been 16 *per cent.*, an exceptionally high figure. In all there were 237,265 road accidents involving personal injury during the year, of which carelessness in turning right or crossing at road junctions contributed to 42,000. Motor cycles, scooters and mopeds, which accounted for only seven *per cent.* of the vehicle mileage, were involved in 22 *per cent.* of the accidents. The number of vehicles licensed rose by 463,000 to a total of nearly seven and a half millions.

RATE COLLECTION, 1958–1959

The Institute of Municipal Treasurers and Accountants is to be congratulated on its 16th return of rate collection (1958–59) which is now prepared in alternate years. Not only has the number of local authorities cited been increased—it now includes all county and metropolitan boroughs, as well as a representative sample of non-county boroughs, urban and rural districts—but four new columns of data have been added. Two show the number of assessments owned by local authorities for which they are responsible for paying rates, and two give details of costs per 100 assessments for owners' allowances and discount.

Although we are warned in the preface to the return that high collection charges may sometimes be the result of the collection of rates in instalments or other special circumstances, the quite considerable variation of this figure throughout the country gives rise to some speculation. Excluding the city of London, which, in this instance as in most matters of local government, may be considered outside the norm, collection charges per 100 assessments vary from £119 to £12. From the information provided by the return, evidence that a discount for prompt payment—more favoured by rural districts than by boroughs or urban districts—contributes to any considerable degree towards the reduction of these charges—is inconclusive.

A study and comparison of the figures raises many interesting speculations. For example, the proportion of "absconded, bankruptcies, legally excused etc." is normally a fraction of one *per cent.* —the average would probably work out at under 0·5 *per cent.*—yet the figure for the borough of King's Lynn is 4·52 *per cent.*, a remarkably high figure in comparison for which there is, no doubt, a simple explanation.

MAGISTERIAL LAW IN PRACTICE

Bury Free Press. July 31, 1959.

A.B. PUTS BENCH IN DILEMMA

Summoned at Ixworth magistrates' court on Friday for committing malicious damage to windows of "The Blue Boar," Walsham-le-Willows, and for refusing to quit licensed premises, A.B. Reginald John Wade (19), *H.M.S. Gambia, home address, Red House Farm, Wattisfield, wrote that his ship had left for Gibraltar and he would be away until July,* 1960.

He pleaded guilty, and said he would be "most grateful for your co-operation in arranging some new procedure."

Inspector Frank Dawson suggested that it was a reference to the new magistrates' court procedure, which dispenses with the attendance of defendants in certain cases.

Adjourned

Having discussed the legal difficulty concerning the necessity for defendant to attend in person to have the option put to him whether he wished to be tried by a jury on the malicious damage charge. the bench adjourned the proceedings with liberty to the police to restore when the defendant returns from overseas.

The defendant's request to the court "to arrange some new procedure" unfortunately could not be complied with. As the police inspector suggested, it was probably a muddled reference to the procedure laid down in s. 1 of the Magistrates' Courts Act, 1957. By that section, a plea of guilty in the absence of the accused applies only where the defendant has been summoned to answer to an information for a summary offence. Since this Act is to be construed as one with the Magistrates' Courts Act, 1952, for a definition of "summary offence" we must look to s. 125 of the latter Act. That definition is further circumscribed by s. 1 of the 1957 Act which removes from the scope of the new procedure (*a*) offences which are also triable on indictment, *i.e.*, cases triable in accordance with s. 18 of the 1952 Act and, (*b*) offences for which the maximum imprisonment exceeds three months, *i.e.*, those triable in accordance with s. 25 of the 1952 Act, and also offences where the accused has no right to be tried on indictment even although the maximum penalty exceeds three months, *e.g.*, assault on a police officer. The definition of "summary offence" excepts an offence triable by a magistrates' court with the consent of the accused under s. 19 of the Act so that the new procedure could not be applied in the present case.

The dilemma the court found itself in was that s. 6 of the 1952 Act requires an accused to be remanded and that requires his presence before the court except where he has been previously remanded and is unable, by reason of illness or accident, to appear or be brought before the court at the end of that remand. Section 14 (2) of the 1952 Act allows a court to adjourn a trial without fixing a date but this is dependent on s. 14 (1) which includes the phrase "whether before or after beginning to try an information." We do not think that this can apply to the trial of an offence which, on the face of it, is indictable until the accused has been before the court and consented to summary trial. We suggest that a better way out of the dilemma would have been to issue a warrant under s. 1 (3) of the 1952 Act.

Yorkshire Post. September 16, 1959.

£10 FINE AFTER KNIFE THREAT

Boy also put on Probation

After two youths from the London area had stated that they left a Skegness amusement park when threatened by another youth who had a knife, the 16 *year old son of a company director was fined* £10 (*the maximum penalty for a juvenile*) *at Skegness juvenile court yesterday.*

The youth had denied that he was in possession of an offensive weapon. Later he and his father protested when he was placed on probation for two years for obtaining intoxicating drink while under the age of 18. *His father told the magistrates: "This has ruined his chances."*

Mr. A. E. Knowles, chairman, replied: "Probation won't do him any harm."

A young person tried summarily for an offence other than homicide that is not a summary offence can be fined a maximum of £10. This provision is found in s. 20 of the Magistrates' Courts Act, 1952, and with that section must be read the definition of "summary offence" in s. 125 of the Act, a definition which excludes from s. 20 offences which can be tried either summarily or on indictment. The procedure for trying these offences is laid down in s. 18 of the Act. In the present case, it appears that the defendant was charged with being in possession of an offensive weapon, contrary to the Prevention of Crime Act, 1953, for which the penalty, if tried on indictment, is imprisonment for a term not exceeding two years or a fine not exceeding £100, or both, and, if tried summarily, is imprisonment for a term

not exceeding three months or a fine not exceeding £50, or both. The case was obviously tried summarily and it is therefore incorrect to say that the fine of £10 was the maximum penalty. The defendant could have been fined £50 since a young person convicted of a summary offence is liable in the same way as an adult to the maximum fine prescribed for that offence (*see* p. 451, *ante*).

With regard to the second charge, the defendant and his father appear to have left their protest too late. The time to object to the making of the probation order was when the defendant was asked, in accordance with s. 3 (5) of the Criminal Justice Act, 1948, whether he was willing to comply with the requirements of the order if one should be made.

REVIEWS

Clarke Hall and Morrison's Law Relating to Children and Young Persons; Second (Cumulative) Supplement to Fifth Edition. By A. C. L. Morrison, C.B.E., and L. G. Banwell. Butterworth & Co. (Publishers) Ltd. Price: Supplement 20s. Combined price 90s. Postage: Supplement 8d. extra, Combined volume 2s. extra.

The fifth edition of this standard text-book was published in 1956. In 1958 a 64 page supplement brought the book up-to-date to September 30, 1958, and now a 176 page second (cumulative) supplement is needed to bring it up-to-date to April 30, 1959. From these brief facts the difficulties faced by publishers can be gauged. Such a text-book loses a great deal of its value for quick ready reference if it is not kept up-to-date, yet to maintain that standard calls for such constant revision that cost becomes prohibitive. The first supplement cost 10s., the second costs 20s., but we feel sure that readers who have the main volume and who know its value will feel that they must have the latest supplement. It contains a considerable number of additions to the noter-up, adds to the "Additional Acts" the Adoption Act, 1958, and the Family Allowance and National Insurance Act, 1959, and to the Additional Instruments, Circulars, etc., new Attendance Centre Rules, and Adoption Rules for juvenile courts, county courts and the High Court, together with two official circulars. The revision seems to have been done with the care which is always given to ensure the accuracy of this invaluable work.

BEARDED BRUTES

Contemporary triumphs in the field of scientific discovery and invention, mechanization and the exploration of extra-terrestrial space, are frequently qualified, in journalese, by the over-worked term "romantic." Here is a word which is rapidly undergoing changes of usage. Its dictionary meanings are "pertaining to, or resembling, romance; fictitious; extravagant; fantastic; imaginative; sentimental." None of these synonyms can be properly used to describe such practical products of applied science as the "Lunik" rockets, the so-called "electronic brains," the "Deuce" computer which mathematically forecast results in the recent General Election, or the mechanical device affectionately known to the public as "Ernie," which draws prize-winning numbers for the holders of premium bonds. In all these reality has outstripped imagination and fact surpasses fantasy; familiarity has turned the extravagant into a commonplace, and truth has shown itself stranger than fiction.

The eminent scientists who are members of the British Association take the opposite standpoint. Subjects which are traditionally reserved for "romantic" treatment, such as love, courtship, marriage and sexual selection, they delight to analyze, to probe scientifically, and sometimes to "debunk." The results, though invariably a useful contribution to the sum of human knowledge, are frequently disconcerting. This year's autumn conference at York included an address by Dr. C. B. Goodhart, of the Cambridge university museum of zoology, the first part of which was entitled *The Evolutionary Significance of Human Hair-Patterns.*

This subject resolved itself into a survey of male hair-styles, with particular reference to beards. "There can be no doubt" (said the speaker) "that the beard is an adornment tending to attract the opposite sex." Races still well-provided with hair and beards are, in his opinion, "more primitive and closer to the ancestral sub-human stock than those among whom hair and beards have become reduced." It was significant that savage warriors of the less hairy races often sought to supplement their own scanty but sexually attractive hair by decorating themselves with monkey skins, ostrich feathers or lions' manes. "Europeans are among the hairest of all peoples." Charles Darwin—"that most impressively bearded scientist"—had expressed the view that beards evolved in response to "sexual selection by the females' deliberately choosing the most handsome males as mates." In a characteristic "aside" Dr. Goodhart doubted whether the females had much choice in the matter, "though of course, in the end, they did get the largest and most impressive males who were able to frighten the others away." (This sounds suspiciously like the process summed up in the feminine aphorism—"He ran after me till I caught him.")

Reading the summary of this lecture in *The Times,* we were reminded of a passage in that instructive (though apocryphal) work, *1066 And All That,* which runs as follows:

> "One of the most romantic aspects of the Elizabethan Age was the Wave of Beards which suddenly swept across history and settled upon all the great men of the period. The most memorable of these beards was the cause of the outstanding event of the reign. The Spaniards complained that Captain F. Drake, the memorable bowls-man, had singed the King of Spain's beard (or "Spanish Mane," as it was called) one day when it was in Cadiz Harbour . . . and sent the Great Armadillo to ravish the shores of England."

If sexual selection is the motive, we get an explanation of the ease with which Mr. Bluebeard, in Charles Perrault's tale, managed to secure a succession of wives, despite his sanguinary propensities. Mention of Charles Darwin (whose *Origin of Species* was published exactly 100 years ago) emboldens us to put forward a theory of our own, namely, that the "impressive beard" affected by the family-man of the mid-Victorian Age was grown not only to give him a ruggedly patriarchal appearance, but also (and far more frequently) to conceal a weak chin. Be that as it may, it cannot be denied that the beard has ever been held in high honour—by the bearded races of mankind. It is the symbol of full manhood; beardlessness is the attribute of the eunuch or the adolescent youth. Literature and legend are full of vivid examples. Young Francis Flute, the bellows-mender, is reluctant to play the woman's part of Thisbe (*A Midsummer Night's Dream,* Act 1, Scene 2) as he "has a beard coming." And the Clown (*Twelfth Night,* Act III, Scene 1) wishes Viola, in her boy's disguise—"Now, Jove, in his next commodity of hair, send thee a beard!"

The patriarchs of the Old Testament are always pictorially represented with long, flowing beards. The King of Ammon (II *Samuel,* 10) insults King David's ambassadors by "shaving off the one half of their beards"; they are "greatly ashamed," and David exhorts them—"Tarry at Jericho until your beards be grown." The insult is avenged by war. The

future King John of England gave deadly offence to the Irish chieftains, in 1185, by plucking at their beards. Regan, in that most terrible episode in *King Lear* (Act III, Scene 7), outrages the dignity of the venerable Earl of Gloucester:

> " Now, by the Gods, 'tis most ignobly done
> To pluck me by the beard."

Lear himself (Act II, Scene 4) asks Goneril—" Art not ashamed to look upon this beard ?" One way and another, the father-fixation is very much to the fore, in literature and art, for thousands of years before Siegmund Freud emphasized the importance of the " Oedipus complex " and the " Electra conflict " in his system of psycho-analysis.

The Kings of the ancient empires of Assyria, Babylonia and Persia are represented, in contemporary bas-reliefs, with long beards, curled and oiled. The Pharaohs of Egypt, and their high officers, seem to have worn a conventionalized beard, and wig, on ceremonial occasions. And the Gods are made in the image of man. The primeval Deities—the Greek Zeus, the Roman Jupiter, the Scandinavian Odin, and even the First Personage of the Trinity (in early Christian art)—are all shown bearded. So are the ancient heroes of many races—Agamemnon, Odysseus, King Arthur, Charlemagne, Mohammed. In *The Seven Ages of Man* (*As You Like It*, Act II, Scene 7) the Soldier is " bearded like the pard "; and the Justice has a " beard of formal cut." There are two outstanding exceptions to the cult, both adopted for good practical reasons. Alexander the Great ordered his Macedonian soldiers to shave off their beards, as being dangerous " handles " by which the enemy might seize them. Peter the Great of Russia shaved off his own beard and put a tax on those of his subjects—a bold fiscal expedient to which no Chancellor of the Exchequer has so far resorted.

In modern Europe beards and whiskers were fashionable for nearly 1,000 years, with the notable exception of the period of the Norman conquest, the 18th century and our own times. But the clergy of all sects have preferred to remain clean-shaven, save for the Franciscans and priests of the Eastern Orthodox Church. We must leave the anthropologist and the psycho-analyst to investigate these discrepancies.

A.L.P.

NOTICES

A series of six lectures at Caxton Hall, London, S.W.1, has been arranged by the Insitute for the Study and Treatment of Delinquency under the general heading of Penal Practice in a Changing Society. Price of admission to non-members is 2*s*. for each lecture or 10*s*. for the series.

November 11, 1959, Mr. Gordon Rose on Training for Young Offenders; December 9, 1959, Rt. Hon. Anthony Greenwood, M.P., on Prisons of the Future; January 13, 1960, Dr. Terence Morris on the Prison as a Small Society; February 10, 1960, Mr. Frank Dawtry, M.B.E., on the Problem of After Care; March 9, 1960, Dr. Peter Scott on Psychiatric and Psychological Services.

SOLICITORS' ARTICLED CLERK'S SOCIETY

Activities for November

Tuesday, 3: S.A.C.S. are holding a debate with an outside Society on a subject of topical interest to all; a lively discussion is insured. Refreshment available at the Law Society from 6 *p.m.*

Tuesday, 17: A party will be visiting the Mermaid Theatre to see the enjoyable " Lock Up Your Daughters," which has been especially extended. Apply early to activities secretary.

Thursday, 26: The Society's Annual General Meeting. This is your chance to run your Society. Elect your committee. All nominations should be given to the secretary early.

Refreshments provided from 6 *p.m.*

Activities for December

Tuesday, 1: Debate at the Law Society. Subject to be fixed. Watch for Details. Refreshments from 6 *p.m.*

Friday, 11: A Christmas party is to be held at Greenwich by kind permission of the local Rowing Club. Watch for details.

PERSONALIA

APPOINTMENTS

Sir Anthony Hawke has been elected recorder of London by the city of London's court of aldermen in succession to Sir Gerald Dobson who is to retire next month, *see* " Retirements " below. Sir Anthony, who was called to the Bar in 1920 has been Common Serjeant at the Old Bailey since 1954.

Mr. William Arnold Sime, Q.C., has been re-appointed recorder of Grantham. He was recorder several years ago, but relinquished the post when he was appointed to a court in Cyprus. Since then, Mr. J. M. G. Griffith-Jones has held the post.

Mr. W. B. Murgatroyd, town clerk of St. Albans, Herts. for the past 11½ years, has been appointed town clerk of the metropolitan borough of Hornsey, to succeed Mr. Harold Bedale, O.B.E., who is retiring. Mr. Murgatroyd will take up his duties on January 1, next.

Mr. Michael Kelly, LL.B., D.P.A., has been appointed deputy clerk to Letchworth, Herts., urban district council, as from December 1, next. He was previously the deputy town clerk of Brighouse, Yorks., borough council. Mr. Kelly was articled to Mr. R. H. Williams, LL.B., town clerk of Hendon borough council and was admitted in March, 1956. He has also held appointments with the borough councils of Lowestoft, Hendon, Harrogate and St. Marylebone.

Mr. R. J. Hughes, assistant solicitor to Southend corporation, has been appointed deputy clerk to the Mansfield borough and divisional magistrates to succeed Mr. W. Dutton, who is retiring on October 31 because of ill health. Mr. Hughes has been a solicitor for nine years and was on the legal staff of Lincoln corporation before moving to Southend. Mr. Dutton joined the Mansfield court staff in 1938, and has been deputy clerk since 1949.

Mr. Jack Lindsay, at present chief assistant solicitor to Sheffield corporation has been appointed to succeed Mr. C. W. Collins as deputy clerk to the Leicester city justices. Mr. Lindsay was formerly with the Barnsley corporation. Mr. Collins is now clerk to the city justices, succeeding Mr. W. E. Blake Carn.

Mr. Graham Ross, LL.B., has been appointed assistant solicitor to Midlands Electricity Board, Halesowen, Worcs., as from November 2, next. He leaves his present position as assistant solicitor to the borough of Scarborough, Yorks., on October 31.

Mr. D. G. Dodds has been appointed to be deputy chairman of the Merseyside and North Wales Electricity Board. He will succeed Mr. J. Rankin, who retires on December 31, next.

The following whole-time officers have been appointed to serve the London probation service: Mrs. J. Blooman, as from September 28, last; Mr. C. H. Brewster, B.E.M., as from August 1, last; Mr. H. J. Johnson, as from September 1, last; and Mr. R. G. Kerr, as from August 17, last.

HONOUR

The Freedom of the Borough of Bermondsey has been bestowed on Alderman E. Snowdon, J.P., in recognition of his long and meritorious service to Bermondsey. Alderman Snowdon has served on the borough council since 1938 and on practically every committee of the council as well as presiding over leading committees as chairman or vice chairman. He served as mayor of the borough in 1949–50. Alderman Snowdon has been a justice of the peace for the county of London since 1944, and represented the West Bermondsey division on the London county council from 1944 to 1949.

RETIREMENTS AND RESIGNATIONS

Sir Gerald Dobson, recorder of London since 1937 is to retire next month. He is 75. Sir Gerald was called to the Bar by the Inner Temple in 1907 and after practising on the South Eastern Circuit was appointed Treasury counsel at the Central Criminal Court in 1925, a position he combined with that of recorder at Tenterden between 1932 and 1934, when he became a Judge at the mayor's and city of London court and a commissioner at the Central Criminal Court. He has been a bencher of the Inner Temple since 1938 and was knighted in 1939.

Mr. Edward Moser, clerk to South Westmorland rural district council, has intimated his intention of retiring at the end of March, next. Mr. Moser has held the clerkship as a part-time officer, becoming clerk and legal advisor in January, 1919, the third clerk in the history of the authority. Although retiring from that office next year, he does not intend to retire from his own business: Mr. Moser is head of one of the oldest firms of solicitors in Westmorland.

OBITUARY

The death has occurred of Sir Michael Whitley at the age of 87. Called to the bar in 1913, he was appointed Puisne Judge of the Straits Settlements in 1918 and became Attorney-General in 1925. He retired in 1929, when he received his knighthood. He was made a justice of the peace for Hampshire in 1941.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*False pretences—Fraudulent conversion—"For or on account of."*

A is charged with obtaining £5 from B by falsely pretending he was authorized by C to receive the £5 on C's behalf. A is also charged with fraudulently converting to his own use the £5 received from B for or on account of C. Are not these two charges *necessarily* alternative?

Having accepted an admission that A has made a false pretence (falsely pretending he was receiving the £5 for C) how can it be said that he then received the £5 for C not falsely but lawfully on account of C and then converted it to his own use.

I might add that the fraudulent conversion charge has been framed with the wording of the second count in *Archbold* in accordance with the terms of s. 20 (1) (iv) (*b*) of the Larceny Act, 1916, although the charge mentions simply s. 20. Had the wording for s. 20 (1) (iv) (*a*) been used then he possibly could have been convicted of both charges.

HOVISA.

Answer.

We agree that the two charges are alternative, but it may be that it is not yet known what C will say in evidence. If he were to say that he had never authorized A to collect the money for him, then the first charge would be appropriate, but, if his evidence is that he had so authorized A, who had failed to pay over the money, then the second charge would apply. If, on the other hand, it has been already established that C did not authorize A to collect the money, then it would seem that a charge under s. 20 (1) (iv) (*a*) is more appropriate and not inconsistent with the charge of false pretences.

2.—Evidence—*Domestic and guardianship proceedings—Reports by probation officers on facts relating to custody of children.*

Quite often in domestic proceedings involving custody of children, and guardianship proceedings, the court wishes to have the assistance of a probation officer to help decide the issue of custody.

I would value your early opinion as to how that report can be received, bearing in mind that in the event of an appeal a copy of the notes of evidence has to be supplied to the Divisional Court.

I take the view that the report ought to be given verbally on oath, or, if in writing, then produced on oath, and not merely handed to the court in confidence without the parties seeing it.

HODDER.

Answer.

In a magistrates' court, there is no provision allowing the admission of written reports in such circumstances. The reports under s. 59 of the Magistrates' Courts Act, 1952, are *not* to be received by the court in evidence. A probation officer must be called as a witness and may give evidence only as to facts within his own knowledge, excluding all hearsay. We have not overlooked the provisions of s. 60 of the Act of 1952 about probation officers' reports on the means of the parties.

3.—Gaming—*Housey-housey on licensed premises—Small Lotteries and Gaming Act*, 1956—*Small Lotteries and Gaming Act*, 1956 (*Amendment*) *Act*, 1959.

A local football club, registered with the local authority under the Small Lotteries and Gaming Act, 1956, desire to commence "housey-housey" in the ballroom of a local hotel.

It is suggested that this could be legal if run in accordance with the rules laid down in s. 1 (2) of the 1956 Act and be deemed a lottery exempt by the 1959 Act.

It appears to me, however, that this type of entertainment comes under s. 4 of the 1956 Act and is therefore still illegal under s. 141 of the Licensing Act, 1953.

FEDOR.

Answer.

We agree with our correspondent that housey-housey savours more of a game than a lottery, but we think it might be possible to run it as a small lottery and, if the conditions laid down in s. 1 (2) of the 1956 Act are strictly complied with, then the protection provided by the 1959 Act will apply.

4.—Hackney Carriages—*Cabs intended to serve part of district—Drivers have another occupation.*

1. This urban district contains a number of towns and when allocating hackney carriage licences my council have had regard to the towns from which it appears the vehicles will be operated, fixing the number of licences according to the needs of the towns concerned; they are aware that in law vehicles are licensed for the urban district as a whole. Recently a vehicle formerly based in one town has habitually been operating in another town. I shall be glad to know whether in issuing licences the council can properly have regard to the individual towns; and whether there is any action they can effectively take in the circumstances mentioned.

2. The number of hackney carriage drivers licensed by the council exceeds of the number of vehicles licensed. Many drivers are in other full time occupation and I should be glad to know to what extent it is considered the principal occupation can be taken into account—concern has been expressed in some instances where, for example, a licensed driver's principal occupation is that of a heavy transport driver. I have noted P.P. 4 at 121 J.P.N. 683.

BATORA.

Answer.

1. The council's power is to license such number of hackney carriages as they think fit. Where a council's district comprises different parts each having a life of its own it seems proper to consider the needs of each part, and to license a number arrived at by adding together the needs of the several parts. As the query indicates, there is no power to impose a condition that a vehicle shall not ply for hire in other parts of the district than that which the council had in mind when they licensed it. Indeed we are not sure what is the nature of the "habitual operation in another town" mentioned in the query. At the present day cabs are often summoned by telephone from their garage, and there is nothing to prevent a cab owner from accepting a telephone booking from any place in the district or outside, and if the driver finds himself in a part of the district far from his garage (*e.g.*, after setting down a passenger) he must accept a hiring if his cab is standing in the street. If for any reason one of the parts of the district is in the council's opinion inadequately supplied with cabs they can issue more licences. When the licence for the vehicle mentioned in the query expires the council are not obliged to renew it, but if they do not do so the proprietor will have a right of appeal to quarter sessions and, if the only reason for refusing to renew was that the owner had been accepting hirings from other parts of the district, quarter sessions might be inclined to allow the appeal.

2. It is usually desirable to have more licensed drivers than licensed vehicles, so as to provide against illness and to provide for turns of duty at times of pressure. Whilst the council are not bound to issue a driver's licence to every person who asks for it, there is (here again) a right of appeal to quarter sessions, who might well take the view that, if an applicant was competent and of good character, the fact of his having some other occupation was not the council's business.

5.—Highway—*Footpath or bridlepath used for vehicles—Liability to repair.*

We own woodland, scheduled as a beauty spot, with a rough pathway wide enough in parts for motor vehicles, and approximately one mile in length. The path is a right of way and is used occasionally by trippers and hikers, horses, vans, and motorists. Parts of this path become swampy in wet weather. We cannot prevent the use of this path because it is a public right of way, but in the event of an accident would we be responsible, and can we compel the council to repair the path, and maintain it to prevent accidents?

PUSAD.

Answer.

It would be as well to find out, if possible, whether the right of way is a way for carriages as well as on foot. It may not be, since it is not wide enough for carriages in all parts. If it is not the cars and carts can be barred from using it. If it is a footpath or bridleway only, it is repairable as such by the highway authority under s. 47 of the National Parks and Access to the Countryside Act, 1949, and the authority can be compelled to repair. In either event the owners of the path will not be liable for accidents unless they do something to add to the dangers in the path.

6.—Husband and Wife—*Adultery—Notice of allegations given to other party.*

With reference to your answer to P.P. 9 at 123 J.P.N. 492, I should like you to consider the following points, as to whether or not the woman or man named should be given an opportunity of attending the proceedings:

(*a*) adultery is a serious allegation;

(*b*) if the man or woman has no notice of the proceedings the first he or she may know of the allegation of adultery is through the press announcing that "X has got (or failed to get) an order against Y because he or she has committed adultery with Z."

(*c*) That although I agree the man or woman cannot take part in the proceedings unless called as witness by one party or another there seems no objection and it appears only common justice that he or she or their legal representatives should have an opportunity of watching the case. GOSON.

Answer.

We agree with what our correspondent says but in the present state of the law we cannot see how we can amend our answer to the P.P. referred to. This topic was the subject of a recommendation by the Royal Commission on Marriage and Divorce, 1951–55, and that recommendation was considered by the recent Departmental Committee on Matrimonial Proceedings in Magistrates' Courts. A majority of the committee, while recognizing the reasons which led the Royal Commission to make the recommendation, found themselves unable to incorporate any change in the law in its draft Matrimonial Proceedings (Magistrates' Courts) Bill. (*See* the committee's report (Cmnd. 638), para. 9.)

7.—Husband and wife—*Husband in Eire—Wife resident here—Jurisdiction—Evidence of witness unfit to travel—Evidence Act*, 1938.

A wife took out summons against her husband for (*a*) desertion; (*b*) persistent cruelty; (*c*) neglect to maintain herself and child. They were married three years ago in this county, the husband lives in Eire and that is and always has been his and the matrimonial home. The summons was served here. The husband works on a ship running from this county to Eire and the complaints took place in Eire. The wife and child are now living in this county, the wife having left her husband.

The wife desires to call a witness from Eire to support her complaint. As such witness is old and unfit to travel, can she obtain such evidence by declaration or affidavit by the witness concerned under the Evidence Act, 1938, and should the court accept such evidence? There will be no opportunity to cross-examine such witness and her evidence could be beneficial to the husband as well if questions were asked.

1. Has a local magistrates' court jurisdiction and power in the above matter.

2. Can the court accept such evidence under the Evidence Act, 1938. HISGUAN.

Answer.

1. The local court can hear the complaint as the wife is ordinarily resident within its jurisdiction (Summary Jurisdiction (Married Women) Act, 1895, s. 4, as amended by the Married Women (Maintenance) Act, 1949, s. 6).

2. We do not think such evidence can be received under the provisions of the Evidence Act, 1938. That Act does not empower written evidence to be received; it deals, in general, with the admissibility of statements already in existence and not simply declared or sworn for specific proceedings.

8.—Husband and wife—*Maintenance Orders (Facilities for Enforcement) Act*, 1920—*No power to vary a registered order.*

We have been consulted by a coloured man from Trinidad. His wife obtained a maintenance order against him on May 21, 1952, in the magistrates court, Port of Spain, Trinidad, in respect of herself and five children. The husband does not admit that all the children are children of the marriage and maintains that his wife has been and is being unfaithful.

He has come to this country to work and the order has been registered in the local magistrates' court here under the Maintenance Orders (Facilities for Enforcement) Act, 1920. There are arrears under the registered order and current payments running.

As we understand the position, the husband could only apply for variation or discharge of the order (assuming he had the necessary evidence) to the court in Trinidad and the only powers the court here has are to enforce the payment of the arrears and current payments by the normal methods applicable to an English order but they could remit the arrears in the exercise of their discretion in the ordinary way.

Do you agree that our view is correct please? JORNA.

Answer.

We agree with the views expressed by our correspondent. *Pilcher* v. *Pilcher* (1955) 119 J.P. 458; [1955] 2 All E.R. 644, decided that an order registered in this country under s. 1 of the Act of 1920 cannot be varied here.

9.—Licensing—*Gaming on licensed premises—Private lottery within s. 23 of the Betting and Lotteries Act*, 1934—*Effect of the Small Lotteries and Gaming Act*, 1956 (*Amendment*) *Act*, 1959.

The Small Lotteries and Gaming Act, 1956 (Amendment) Act, 1959, provides that a lottery conducted on licensed premises will not be an unlawful lottery if s. 1 of the Small Lotteries and Gaming Act, 1956, is complied with.

Since the 1959 amendment Act apparently only exempts lotteries which are otherwise lawful under s. 1 of the 1956 Act, what is the position with regard to lotteries which were otherwise lawful under s. 23 of the Betting and Lotteries Act of 1934, having regard to the decision of *Smith* v. *Wyles* in 1958, where such lotteries are run in conjunction with dances held on licensed premises in aid of charitable objects?

Am I right in thinking that all the conditions of s. 1 of the 1956 Act together with ss. 2 and 3 must be complied with, even in cases where the lottery complies with s. 23 of the 1934 Act, if it is conducted in conjunction with a dance held in the ballroom of a licensed hotel? KENOR.

Answer.

In our view the case of *Smith* v. *Wyles* [1958] 3 All E.R. 279 makes it clear that the provisions of s. 23 of the Betting and Lotteries Act, 1934, and of s. 1 of the Act of 1956 do not of themselves override the prohibition in s. 141 of the Licensing Act, 1953, against suffering gaming on licensed premises.

It seems to us, therefore, that as the Act of 1959 refers only to s. 1 of the Act of 1956 it is still unlawful to allow on licensed premises any gaming in the form of a lottery which is lawful by virtue of s. 23 of the Act of 1934.

10.—Licensing—*Protection order—Transfer—Transfer sessions held for convenience at courts A and B—To which transfer sessions should application be made.*

Section 23 (5) of the 1953 Act provides that a protection order *shall* remain in force until the *next* transfer sessions (or etc). In my (geographically large) licensing district (one division) I have two courts A and B (formerly there were two sub-divisions with separate clerks) with, in practice, their own justices (including licensing justices) and transfer sessions are held periodically at each court house for convenience of licensees. A protection order is granted at court A and it so happens that the next transfer sessions is at court house B. Can such protection order be granted so as to remain in force until the next transfer sessions at court house A? If not, can the provisions of s. 23 (6) be made use of, necessarily rather indirectly, to achieve very much the same result? OWEGO.

Answer.

Transfer sessions held for convenience in courts A and B are none the less transfer sessions for the whole petty sessional division and licensing justices assigned by arrangement to sit at each have precisely the same jurisdiction as at the other. Where a protection order is granted at either court A or court B it generally will remain in force only until the next transfer sessions, irrespective of whether those sessions are held at A or B (Licensing Act, 1953, s. 23 (5)). But if, in the case under consideration, notice of application for transfer is given so as to relate to court B transfer sessions, we see no reason in a proper case (especially so in the absence of objection by the applicant) why consideration of the application should not be adjourned under s. 23 (6) until the following transfer sessions held at court A.

11.—Licensing—*Registered club—Striking off register—Disqualification of premises on second order—Period.*

In 1952 a registered club is struck off the register and an order made that the premises occupied by the club shall not for 12 months be occupied and used for the purposes of any registered club. In 1959 another registered club occupying the same premises as the former club is likely to be struck off the register. Please advise whether an order for five years under s. 144 (5) (*b*) of Licensing Act, 1953, is within the powers of the justices, having regard to s. 160 (2) of that Act. N. JAPHET.

Answer.

The Licensing Act, 1953, s. 160 (2) places no restriction on the power of a magistrates' court, in the situation outlined, to order disqualification of the premises for the purposes of any registered club for a period of five years in accordance with s. 144 (5) (*b*) of the Act.

By way of contrast, we direct our correspondent's attention to s. 120 (2) (*b*) (*c*), and s. 120 (3) of the Act as a typical example of a case where the modifying provision of s. 160 (2) would operate.

12.—Licensing—*Renewal of licences—Non-requirement of attendance of licence holder.*

At the next general annual licensing meeting it is proposed to renew all licences without requiring the attendance of the licence-holder/holders, unless the justices require the attendance of a particular licence-holder for any reason.

This is a practice recommended in the "suggested code of procedure" set out in appendix I of *Paterson*, but at p. 58 of the 1959 edition of that work the learned editor expressed the opinion that the licence-holder "should send an authorized messenger or apply by letter, otherwise the justices need not renew, and the licence would lapse."

What is proposed here is that the notice to be given to each licensee of the holding of the first session of the general annual licensing meeting should bear an inscription along the lines of the first paragraph of this letter.

It seems to me that the justices would then be able to renew such licences without reference to whether or not a messenger or letter was before them. Do you agree?

NOSTIN.

Answer.

Yes.

13.—**Licensing Justices**—*Chemist licensed to sell wines—Disqualification.*

A new magistrate has just been appointed for a borough having a separate commission of the peace. He carries on business as a chemist within the borough and holds a licence to sell wines " by virtue of his trade or calling as a chemist." I would be grateful for your opinion as to whether this disqualifies him from becoming a member of the borough licensing committee or the borough confirming authority.

LANDOR.

Answer.

The magistrate in question is a justice who is within the prohibition in s. 48 (1) of the Licensing Act, 1953, in that he is a retailer of certain intoxicating liquor in the borough; he holds a justices' licence for that purpose.

14.—**Magistrates**—*Jurisdiction and powers—Committal of offender to quarter sessions for borstal sentence—Committal at the same time, under s.* 29 *of the Magistrates Courts Act,* 1952, *for sentence in respect of probation offences.*

A man of 20 is convicted under s. 5 of the Public Order Act, 1936, and because of his bad record he is committed to quarter sessions under s. 28 of the Magistrates' Courts Act, 1952, with a view to borstal training. He is already on probation in respect of three offences of larceny and for these the justices decided to commit him at the same time to quarter sessions for sentence under s. 29 of the Magistrates' Courts Act. It is suggested the court had no power to commit him for the larcenies in view of s. 8 (5) of the Criminal Justice Act, 1948, on the ground that he had not been finally " dealt with " by the magistrates for the s. 5 offence. Were the justices right?

IJESURAL.

Answer.

We do not think that he has been convicted and dealt with within the meaning of s. 8 (5) of the Criminal Justice Act, 1948. In our view quarter sessions should have been left to deal with the probation offences by virtue of their powers under s. 8 (6) of that Act.

15.—**Magistrates**—*Practice and procedure—Cases against two separate defendants heard together by consent because evidence the same in each case—Procedure at the hearing.*

A and B are respectively the drivers of two cars involved in an accident and both are summoned for careless driving. The prosecution witnesses are the same in both cases and to save time both the prosecution and the two defendants desire the cases to be heard together.

If the cases are so taken, am I correct in advising:

1. That the procedure would be the same as it would have been if the cases were taken separately.

2. That the defendants are not co-defendants.

3. That the evidence of one defendant given on his own behalf will not be evidence against the other, and

4. That if either defendant gives evidence on his own behalf, he cannot be cross-examined by the other defendant in addition to the prosecutor.

MARUC.

Answer.

1. 2. 3. 4. Yes, you are correct in so advising.

16.—**Magistrates**—*Practice and procedure—Defect in form of summons by failure to specify amending regulation.*

Rule 77 (2) of the Magistrates' Courts Rules, 1952, states that if an offence charged in a summons is one created by or under any Act, the description of the offence shall contain a reference to the section of the Act or, as the case may be, the rule, order, regulation, byelaw or other instrument creating the offence.

Recently at my court a summons for using a motor vehicle which emitted smoke likely to cause danger, which was stated to be under reg. 79 of the Motor Vehicles (Construction and Use) Regulations, 1955, was dismissed with costs against the police, the defendant's advocate having objected to the summons on the ground that it should have mentioned reg. 2 (8) of the Motor Vehicles (Construction and Use) (Amendment) Regulations, 1957. The amendment regulations in fact contain a new regulation in substitution for reg. 79 of the 1955 Regulations.

The object of r. 77 is obviously to enable a defendant to consult the Act or other instrument creating the offence with which he is charged and, whilst reference to the 1958 edition of *Stone* would show the 1955 Regulations as amended, were the defendant to purchase a Stationery Office copy of the 1955 Regulations they might be of little use to him unless he also purchased a copy of the 1957 Amendment Regulations.

In my opinion, therefore, the objection to the summons was rightly taken, and I should be obliged if you would let me have your opinion as to whether the summons was in fact bad, in that it mentioned only reg. 79 of the 1955 Regulations.

LAYIS.

Answer.

We think that the summons should have referred to the amending regulations, but that the failure to do this made the summons defective in form only and that s. 100 of the Magistrates' Courts Act, 1952, applied. When the objection was taken the court should have given the prosecutor an opportunity to amend the summons. If the court thought that the defendant was thereby embarrassed in proceeding with his defence forthwith, an adjournment could have been granted.

17.—**Private Street Works**—*Public Health Acts,* 1875 *and* 1925—*Allowance to frontagers of apportioned sums.*

My council have made up under the provisions of s. 150 of the Public Health Act, 1875, a street leading from a main road. Premises 1 and 2 front the main road and have flank frontages, of approximately the same measurement, to the private street. In carrying out the street works the council did not metal the section of roadway adjacent to the flank frontages concerned, but paved the whole area, and provided seats and some shrubs, the intention being to restrict vehicular access to the main road.

Objections to the works were made by the owners of property 1 by way of memorial to the Minister under s. 268 of the Public Health Act, 1875, and by the owners of property 2 before the justices when the council sought enforcement of the apportioned charges. In both cases the owners objected, *inter alia*, on the ground that the cost was unreasonable because no vehicular access was now available to the flank frontage.

The justices in hearing the council's application for payment of the charges apportioned on property 2 rejected the owners' objections and made an order for payment. No appeal was lodged.

Some time later the Minister held a public inquiry in connexion with the objections by the owner of property 1 and subsequently made an order relieving that owner of all road charges apportioned in respect of his flank frontage. From this decision there is no appeal.

As a result of the Minister's decision the solicitors to the owner of property 2 have pointed out the similarity of the grounds of objection in both cases and the disparity in the decisions, and asked the council to consider whether their client could also be relieved of the charges for the flank frontage.

On equitable grounds the council are disposed to agree to do this, provided they have the necessary power. The Minister on this point has said that he is " not aware of any powers under which it would be possible for him to authorize the remission."

It is appreciated that s. 81 of the Public Health Act, 1925, permits a local authority operating the Act of 1875, if they think fit, at any time to resolve to contribute the whole or a portion of the expenses of the works, but the text books on the subject appear to suggest that any such " contribution " must benefit the frontagers as a whole and not individual frontagers. There does not, however, appear to be any decided case on this point. In *Chatham Corporation* v. *Wright* (1930) 94 J.P. 43; [1929] 2 All E.R. 657, whilst this case deals with another point under the Act of 1892, Avory, J., infers that one of the alternatives available to the justices was to adjourn the matter until such time as the local authority had opportunity to consider a new resolution to increase their contribution (in this case to two frontagers) under s. 15 of that Act, the context of which section is similar to s. 81 of the Public Health Act, 1925. In the Highways Act, 1959, provision is made in s. 210 (2) for local authorities to contribute towards the cost of making up flank frontages.

Advice is therefore sought as to:

1. Whether in the circumstances outlined above s. 81 of the Public Health Act, 1925, gives the council power to remit at this stage the charges apportioned on the flank frontage of property 2.

2. Whether, when s. 210 (2) of the Highways Act, 1959, is in force, advantage could be taken of its provisions in the present case, if in the meantime enforcement of the order for payment is deferred.

POSUR.

Answer.

1. No, in our opinion. The power to contribute ceased when the application for payment was settled.

2. No, in our opinion, for the same reason.

18.—Public Health Act, 1936—*Extension of public sewer.*

I refer to P.P. 17 at p. 494, *ante*. Having regard to s. 14 of the Public Health Act, 1936, I cannot see the relevance of the reference in the question to the public sewer in land which is " a highway maintainable at public expense." Would your answer to this question be the same if the public sewer in question existed on private land? PEVON.

Answer.

Yes, if the authority were acting under ss. 14 and 15 of the Public Health Act, 1936. There might be circumstances in which the authority could construct a sewer in the land of an owner and on his behalf, by agreement under s. 275 of the Public Health Act, 1936.

19.—Public Health Act, 1936, s. 36—*Cost of connexion to sewer—Actual or average.*

In carrying out new sewerage schemes, my council have hitherto charged the ascertained cost of sewer laterals, and have got as many owners as possible to agree to have them laid by the contractors at the same time as the main sewers have been installed. This results in great inequality—some owners near the sewer paying little whilst others on the opposite side of the street pay a great deal. The council are considering whether to estimate the whole cost of laterals and charge a level sum, representing the average cost, to each owner. It seems however that as s. 36 (2) of the Public Health Act, 1936, refers to the estimated cost, an owner could object to paying the " average " cost if it was apparent that the real cost of connexion would be less. I should like to argue that s. 36 does not apply because, until the whole scheme has been finished and is functioning, the sewers laid are not public sewers within the meaning of the Act. This argument however might be open to contradiction in view of *Turner* v. *Handsworth U.D.C.* (1909) 73 J.P. 95, noted in *Lumley* at p. 2259. POSAM.

Answer.

We consider that s. 36 of the Public Health Act, 1936, applies; the sewer becomes a public sewer as soon as laid, and must be laid before communication can be made. The cost, in our opinion, must be the actual cost and not an average cost. The cost is that of the exercise of the rights of the person who would otherwise have made the communication; *see* s. 36 (2).

20.—Road Traffic Acts—*Accident involving injury—Insurance certificates produced by drivers concerned to each other—Reporting to police.*

A and B are involved in an accident; there were slight injuries to A and C, a passenger in B's car, in addition to damage to both vehicles. A and B, without being requested, take out and produce to each other their certificates of insurance and exchange names and addresses. Is it necessary to report the accident to the police?

1. Are the words " The driver shall as soon as possible and *in any case* within 24 hours of the accident, report it to the police . . ." mandatory, so that an accident involving personal injury to another person must be reported to the police whether certificates of insurance are produced or not?

2. We presume that if say A alone was injured and B had no knowledge of this, A need not report the matter to the police provided s. 22 is complied with. LORAL.

Answer.

1. The words " in any case " referred to in the question are to qualify the preceding words " as soon as reasonably practicable," and they do not have the effect suggested in the question. The accident need not be reported to the police.

2. We agree.

21.—Road Traffic Acts—*Aiding and abetting—" L " driver gives lift to a non-qualified passenger—Passenger unaware that driver had not a full licence.*

A is a provisional driving licence holder who has not passed his driving test. He gives B a pillion ride on his solo motor cycle when not displaying " L " plates. When stopped by the police, B, who is not the holder of a driving licence of any description, states that he was not aware that A is a learner driver and was not, therefore, in a position to know that he should not have accepted the pillion ride.

Nevertheless, it is contended that B commits the offence of aiding and abetting A to commit the offence of carrying an unauthorised passenger (reg. 16 (3) (*b*), Motor Vehicles (Driving Licences) Regulations, 1950) for the following reasons:

1. This offence would not have been committed by A had not B have ridden pillion. It appears, therefore that his actions must have aided and abetted it.

2. The word *knowingly* does not appear in s. 35, Magistrates' Courts Act, 1952, which lays down the principles of aiding and abetting offences.

The case of *Ackroyds Air Travel* v. *Director of Public Prosecutions* (1950) 114 J.P. 251; [1950] 1 All E.R. 953, is known and may be argued against the above opinion as part of the judgment states: " The test to be applied is that if a person knows that the acts which constitute an offence are being done and he helps in any way he commits an offence."

However, it may also be said to support the views expressed, as B accepted the pillion ride knowing that he himself was not the holder of a licence, which are the main facts of the case; and which if they had not been present, would not have caused A, the rider, to commit the main offence. IDEM.

Answer.

We consider that B cannot be said to know that the acts which constitute the offence are being done if he is not aware that A has only a provisional licence. Unless there is some evidence to show that B was aware of this fact, we do not think that he can be said to aid and abet the commission of the offence by A, that offence being that A *as the holder of a provisional licence* did carry a passenger who was not himself the holder of a full licence.

22.—Road Traffic Acts—*Notice of intended prosecution—Warning given " at the time."*

A private motorist witnessed a case of dangerous driving by the driver of another private motor car on a public road. He took the number of the car concerned and wrote it down. Within half a mile of the incident, all vehicles were stopped at a level crossing. The private motorist went to the offender's car and told him he was going to report him for dangerous driving, and asked him for his name and address. The driver replied. " You have got my number, that is all you want." The car was driven away.

Notice of Intended Prosecution was not served upon the driver within 14 days. In those circumstances, does the warning given to the private motorist comply with s. 21 of the Road Traffic Act, 1930, bearing in mind that the motorist as a private individual can institute proceedings if he wishes to do so. MAMOS.

Answer.

The only case on this point of which we are aware is that of *Jeffs* v. *Wells* (1936) referred to at 100 J.P.N. 406.

With some hesitation, on the facts given in the question, we think that this warning was not given at the time the offence was committed. Reading s. 21 as a whole it seems obvious that the warning or notice is intended to leave the defendant in no doubt about the particular incident which is the subject of the complaint. This does not seem to be achieved merely by saying to a driver, half a mile away from the scene of the incident, " I am going to report you for dangerous driving " since that does not give any indication of what particular piece of driving is complained of. For this reason we consider that the warning was not given " at the time the offence was committed."

23.—Tort—*Damage to property in course of private street works—Whether compensation chargeable as expense of street works.*

I refer to Query 5 at p. 422. I should be glad to know whether, in your view, the cost of providing the suggested new foundation for the property referred to, or, alternatively, of paying compensation under s. 308 of the Public Health Act, 1875, would be charged to the expenses of making up the street and so fall to be paid by the frontagers (subject to any contribution made by the highway authority, for example, under s. 15 of the Private Street Works Act, 1892); or whether such cost would be borne as a highway charge exclusively by the highway authority. PADORA.

Answer.

The expense of the foundation must be borne by the council. The damage is a consequence of the alteration of the level of the street by the council, and is not part of the making up of the street.

24.—Tort—*Flooding caused by council's development.*

A culvert, of adequate size at the time of construction and for many years thereafter, carries a watercourse under a railway. The size of the culvert has recently become inadequate and flooding has occurred. This inadequacy is caused by the greatly increased volume of water finding its way into the watercourse, as a result of large scale housing development carried out by the council in the vicinity. It is clear that, in general, flooding resulting from such development may render the council liable to an action for nuisance and to compensation, by virtue of ss. 278 and 331 of the Public Health Act, 1936. Do you consider that this liability is affected and, if so, in what way, because of the existence of the culvert and because it passes under a railway? To widen the culvert to a size adequate to receive the increased volume of water resulting from the council's housing activities will cost about £5,000. The British Transport Commission has denied liability. PAFFORA.

Answer.

No, in our opinion. It is not the size of the culvert or the fact that it passes under a railway that causes the flooding, but the increased volume of water passing into the stream uncontrolled.